DEPARTMENT OF ENVIRONMENTAL QUALITY
130 West Congress Street
Tucson, Arizona 85701-1317

DAVID M. ESPOSITO
Director

(602) 740-3340
FAX (602) 882-7709

RECEIVED
FEB 16 1995
Air & Toxics Division
U.S. EPA, Region 9

February 13, 1995

Ms. Jessica Gaylord
U.S. Environmental Protection Agency
Air and Toxic Division (A-5-1)
75 Hawthorne Street
San Francisco, CA 94105

Dear Ms. Gaylord:

Attached is documentation regarding Pima County Department of Environmental Quality's (PDEQ) submittal of PSD requirements and analysis of PM-10 increments consistent with 40 CFR 51.166 (as amended in by 58 FR 31622, June 1993) into the State Implementation Plan (SIP). This documentation is being submitted to EPA Region IX to demonstrate compliance with PDEQ's Fiscal Year 95 EPA 105 Program Objective: Product 2 under the New Source Review Section.

PDEQ, through the Arizona Department of Environmental Quality, submitted revisions to the SIP to meet all applicable requirements of Title I of the Clean Air Act with respect to NSR and PSD on August 31, 1994. The attached documents are excerpts from the August 31, 1994 SIP submittal intended to demonstrate compliance with PDEQ's 105 Program Objective. A complete copy of the SIP submittal is available to EPA New Source Review staff at their request.

If you have any questions regarding these documents or would like additional information, please contact me at (602) 740-3332.

Sincerely;

RV Grimaldi

Richard Grimaldi,
Technical Services Manager

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Fife Symington, Governor Edward Z. Fox, Director

August 31, 1994

RECEIVED

AUG 3 1 1994

Air & Toxics Division
U.S. EPA, Region 9

Ms. Felicia Marcus
Regional Administrator
U.S.E.P.A. Region IX
75 Hawthorne Street
San Francisco, CA 94105

RE: Submittal of State Implementation Plan - Pima County New Source Review and Prevention of Significant Deterioration (NSR/PSD) Program for Major Sources and Major Modifications, and New Source Review for Minor Sources.

Dear Ms. Marcus:

Consistent with the provisions of Arizona Revised Statutes (ARS) §§ 49-402(A), 49-404, and 406 (See Exhibit 1), 40 CFR, Part 51, Subparts F and I, the Arizona Department of Environmental Quality (ADEQ) hereby submits to the U.S. Environmental Protection Agency five copies of Pima County's rules governing permits for stationary air pollution sources as a revision to the State Implementation Plan (SIP). This submittal is intended to meet all applicable requirements of Title I of the Clean Air Act with respect to New Source review (NSR) and Prevention of Significant Deterioration (PSD).

The ADEQ Air Quality staff has reviewed the Pima County submittal and has found all of the required components to be present as noted in Exhibit 2 (NSR and Sip Completeness Checklist).

The following constitutes a description of the contents and applicability of this submittal.

Contents

This submittal includes several exhibits and attachments, as follows:

Exhibit 1 ARS, Title 49, Chapter 3, Articles 1, 2, and 3.

Exhibit 2 NSR and SIP Completeness Checklist

Attachments #1 through #7 of the Pima County SIP Submittal.

If you have any questions regarding this submittal, please call Nancy Wrona at (602) 207-2308, or Ira Domsky, at (602) 207-2365.

Thank you for your consideration in this matter.

Sincerely,

Edward Z. Fox
Director

Attachments

c: Nancy Wrona
Ira Domsky
Ken Bigos
David Esposito
Martha Salvato

EXHIBIT 1

A.R.S. TITLE 49 ARTICLES 1, 2, AND 3

ARTICLE 1. GENERAL PROVISIONS (air)

49-401. Declaration of policy

A. The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the department of environmental quality and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

B. It is further declared to be the policy of this state that no further degradation of the air in the state of Arizona by any industrial polluters shall be tolerated. Those industries emitting pollutants in the excess of the emission standard set by the director of environmental quality shall bring their operations into conformity with the standards with all due speed. A new industry hereinafter established shall not begin normal operation until it has secured a permit attesting that its operation will not cause pollution in excess of the standards set by the director of environmental quality.

49-401.01. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the United States environmental protection agency.

2. "Adverse effects to human health" means those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely toxic, chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. "Adverse environmental effect" means any significant and widespread adverse effect which may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. "Attainment area" means any area in this state that has been identified in regulations promulgated by the administrator as being in compliance with national ambient air quality standards.

5. "Building", "structure", "facility" or "installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group which have the same two digit code, as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement.

6. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42 United States Code sections 7401 through 7671) as amended by the clean air act amendments of 1990 (P.L. 101-549).

7. "Commence" means, as applied to construction of a source:

(a) For purposes other than title IV of the clean air act, that the owner or operator has obtained all necessary preconstruction approval or permits required by federal law and this chapter and has done either of the following:

(i) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time.

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.

(b) For purposes of title IV of the clean air act, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

8. "Construction" means any physical change in a source or change in the method of operation of a source including fabrication, erection, installation or demolition of a source that would result in a change in actual emissions.

9. "Conventional air pollutant" means any pollutant for which the administrator has promulgated a primary or secondary national ambient air quality standard.

10. "Federally listed hazardous air pollutant" means any air pollutant adopted pursuant to section 49-426.03, subsection A and not deleted pursuant to that subsection.

11. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the director has designated as a hazardous air pollutant pursuant to section 49-426.04, subsection A and has not deleted pursuant to section 49-426.04, subsection B.

12. "Hazardous air pollutant reasonably available control technology" means an emissions standard for hazardous air pollutants which the director, acting pursuant to section 49-426.06, subsection C, or the control officer, acting pursuant to section 49-480.04, subsection C, determines is reasonably available for a source. In making the foregoing determination the director or control officer shall take into consideration the estimated actual air quality impact of the standard, the cost of complying with the standard, the demonstrated reliability and widespread use of the technology required to meet the standard, and any non air quality health and environmental impacts and energy requirements. For purposes of this definition an emissions standard may be expressed as a numeric emissions limitation or as a design, equipment, work practice or operational standard.

13. "Major source" means a stationary source or a group of stationary sources that is located within a contiguous area, that is under common control and that is defined as a major source in section 501(2) of the clean air act or that is a major emitting facility as defined in title 1, part C of the clean air act or that is defined in department rules as a major source consistent with the clean air act.

14. "Maximum achievable control technology" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this chapter, including a prohibition on such emissions where achievable, that the director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by an affected source to which such standard applies, through application of measures, processes, methods, systems or techniques including measures which:

(a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications.

(b) Enclose systems or processes to eliminate emissions.

(c) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point.

(d) Are design, equipment, work practice, or operational standards, including requirements for operator training or certification.

(e) Are a combination of the above.

15. "Minor source" means any stationary or portable source that is not a major source.

16. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest.

17. "Modification" or "modify" means a physical change in or change in the method of operation of a source which increases the actual emissions of any air pollutant emitted by such source by more than any relevant de minimis amount or which results in the emission of any air pollutant not previously emitted by more than such de minimis amount.

18. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the administrator pursuant to 42 United States Code section 7409.

19. "Nonattainment area" means any area in this state that is designated as prescribed by section 49-405 and where violations of national ambient air quality standards have been measured.

20. "Nonattainment area plan" means an air pollution control plan developed in accordance with 42 United States Code sections 7501 through 7515.

21. "Permitting authority" means the department or a county department or agency that is charged with enforcing a permit program adopted pursuant to section 49-480, subsection A.

22. "Planning agency" means the organization designated by the governor pursuant to 42 United States Code section 7504 as having the authority and responsibility of preparing nonattainment area plans.

23. "Portable source" means any stationary source that is capable of being transported and operated in more than one county of this state.

24. "Primary standard attainment date" means the date defined within a nonattainment area plan in accordance with 42 United States Code sections 7401 through 7515 and after which date primary national ambient air quality standards may not be violated.

25. "Reasonable further progress" means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.

26. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution.

27. "State implementation plan" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the director and submitted to the administrator pursuant to 42 United States Code section 7410.

28. "Stationary source" means any facility, building, equipment, device or machine that operates at a fixed location and that emits or generates air contaminants.

29. "Unclassifiable area" means all areas of this state for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

49-402. State and county control

A. The department shall have original jurisdiction over such sources, permits and violations that pertain to:

1. Major sources in any county that has not received approval from the administrator for new source review under the clean air act and prevention of significant deterioration under the clean air act.

2. Smelting of metal ore.

3. Petroleum refineries.

4. Coal fired electrical generating stations.

5. Portland cement plants.

6. Air pollution by portable sources.

7. Air pollution by mobile sources for the purpose of regulating those sources as prescribed by article 5 of this chapter and consistent with the clean air act.

8. After November 15, 1993, sources that are located in either a county that has not submitted a permit program as required under title V of the clean air act or in a county for which the administrator has disapproved that permit program.

B. Except as specified in subsection A of this section, the review, issuance, administration and enforcement of permits issued pursuant to this chapter shall be by the county or multi-county air quality control region pursuant to the provisions of article 3 of this chapter. After the director has provided prior written notice to the control officer describing the reason for asserting jurisdiction and provided an opportunity to confer, the county or multi-county air quality control region shall relinquish jurisdiction, control and enforcement over such permits as the director designates and at such times as he asserts jurisdiction at the state level. The order of the director which asserts state jurisdiction shall specify the matters, geographical area, or sources over which the department shall exercise jurisdiction and control. Such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted and the provisions of this chapter shall govern, except as provided in this chapter, until jurisdiction is surrendered by the department to such county or region.

C. Portable sources under jurisdiction of the department under subsection A, paragraph 6 of this section may be required to file notice with the director and the control officer who has jurisdiction over the geographic area that includes the new location before beginning operations at that new location.

D. Notwithstanding any other law, a permit issued to a state regulated source shall include the emission standard or standard of performance adopted pursuant to section 49-479, if such standards are more stringent than those adopted by the director and if such standards are specifically identified as applicable to the permitted source or a component of the permitted source. Such standards shall be applied to sources identified in subsection A, paragraph 2, 3, 4 or 5 of this section only if the standard is formally proposed for adoption as part of the state implementation plan.

E. The regional planning agency for each county which contains a vehicle emissions control area shall develop plan revisions containing transportation related air quality control measures designed to attain and maintain primary and secondary ambient air quality standards as prescribed by and within the time frames specified in the clean air act. In developing the plan revisions, the regional planning agency shall consider all of the following:

1. Mandatory employee parking fees.
2. Park and ride programs.
3. Removal of on-street parking.
4. Ride share programs.
5. Mass transit alternatives.
6. Expansion of public transportation systems.
7. Optimizing freeway ramp metering.
8. Coordinating traffic signal systems.
9. Reduction of traffic congestion at major intersections.
10. Site specific transportation control measures.
11. Reversible lanes.
12. Fixed lanes for buses and car pools.
13. Encouragement of pedestrian travel.
14. Encouragement of bicycle travel.
15. Development of bicycle travel facilities.
16. Employer incentives regarding ride share programs.
17. Modification of work schedules.
18. Strategies for controlling the generation of air pollution by nonresidents of nonattainment areas.
19. Use of alternative fuels.
20. Use of emission control devices on public diesel powered vehicles.
21. Paving of roads.
22. Restricting off-road vehicle travel.
23. Construction site air pollution control.
24. Other air quality control measures.

F. Each regional planning agency shall consult with the department of transportation to coordinate the plans developed pursuant to subsection E of this section with transportation plans developed by the department of transportation pursuant to any other law.

49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before the effective date of this section remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the enactment of the clean air act in any area which is a nonattainment area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-405. Attainment area designations

A. The governor may designate the status and classification of areas of this state with respect to attainment of national ambient air quality standards.

B. The director shall adopt rules that both:

1. Describe the geographic extent of attainment, nonattainment or unclassifiable areas of this state for all pollutants for which a national ambient air quality standard exists.

2. Establish procedures and criteria for changing the designations of areas that include all of the following:

(a) Technical bases for proposed changes, including ambient air quality data, types and distributions of

sources of air pollution, population density and projected population growth, transportation system characteristics, traffic congestion, projected industrial and commercial development, meteorology, pollution transport and political boundaries.

(b) Provisions for review of and public comment on proposed changes to area designations.

(c) All area designations adopted by the administrator as of May 30, 1992.

49-406. Nonattainment area plan

A. For any ozone, carbon monoxide or particulate nonattainment area the governor shall certify the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for that area under 23 United States Code section 134 as the agency responsible for the development of a nonattainment area plan for that area.

B. For any ozone, carbon monoxide or particulate nonattainment area for which no metropolitan planning organization exists, the department shall be certified as the agency responsible for development of a nonattainment area plan for that area.

C. For any ozone, carbon monoxide or particulate nonattainment area, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall, by November 15, 1992, and from time to time as necessary, jointly review and update planning procedures or develop new procedures.

D. In preparing the procedures described in subsection C of this section, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall determine which elements of each revised implementation plan will be developed, adopted, and implemented, through means including enforcement, by the state and which by local governments or regional agencies, or any combination of local governments, regional agencies or the state.

E. The department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall enter into a memorandum or agreement for the purpose of coordinating the implementation of the procedures described in subsection C and D of this section.

F. At a minimum, the memorandum of agreement shall contain:

1. The relevant responsibilities and authorities of each of the coordinating agencies.

2. As appropriate, procedures, schedules and responsibilities for development of nonattainment area plans or plan revisions and for determining reasonable further progress.

3. Assurances for adequate plan implementation.

4. Procedures and responsibilities for tracking plan implementation.

5. Responsibilities for preparing demographic projections including land use, housing, and employment.

6. Coordination with transportation programs.

7. Procedures and responsibilities for adoption of control measures and emissions limitations.

8. Responsibilities for collecting air quality, transportation and emissions data.

9. Responsibility for conducting air quality modeling.

10. Responsibility for administering and enforcing stationary source controls.

11. Provisions for the timely and periodic sharing of all data and information among the signatories relating to:

(a) Demographics.

(b) Transportation.

(c) Emissions inventories.

(d) Assumptions used in developing the model.

(e) Results of modeling done in support of the plan.

(f) Monitoring data.

G. Each agency that commits to implement any emission limitation or other control measure, means or technique contained in the implementation plan shall describe that commitment in a resolution adopted by the appropriate governing body of the agency. The resolution shall specify the following:

1. Its authority for implementing the limitation or measure as provided in statute, ordinance or rule.

2. A program for the enforcement of the limitation or measure.

3. The level of personnel and funding allocated to the implementation of the measure.

H. The state, in accordance with the rules adopted pursuant to section 49-404, and the governing body of the metropolitan planning organization shall adopt each nonattainment area plan developed by a certified metropolitan planning organization. The adopted nonattainment area plan shall be transmitted to the department for inclusion in the state implementation plan provided for under section 49-404.

I. After adoption of a nonattainment area plan, if on the basis of the reasonable further progress determination described in subsection F of this section or other information, the control officer determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, the control officer shall issue a written finding to the person, and shall provide an opportunity to confer. If the control officer subsequently determines that the failure has not been corrected, the county attorney, at the request of the control officer, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

J. After adoption of a nonattainment area plan, if, on the basis of the reasonable further progress determination described in subsection F of this section or other information, the director determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, and that the control officer has failed to act pursuant to subsection I of this section, the director shall issue a written finding to the person and shall provide an opportunity to confer. If the director subsequently determines that the failure has not been corrected, the attorney general, at the request of the director, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

K. Notwithstanding subsections A and B of this section, in any metropolitan area with a metropolitan statistical area population of less than two hundred fifty thousand persons, the governor shall designate an agency that meets the criteria of section 174 of the clean air act and that is recommended by the city that causes the metropolitan area to exist and the affected county. That agency shall prepare and adopt the nonattainment area plan. If the governor does not designate an agency, the department shall be certified as the agency responsible for the development of a nonattainment area plan for that area.

49-407. Private right of action; citizen suits

A. Except as provided in subsection B, a person having an interest may commence a civil action in superior court on his own behalf against the director alleging a failure of the director to perform an act or duty under this article or article 2 of this chapter that is not discretionary with the director or alleging that the director has unreasonably delayed an action within the director's authority. The court has jurisdiction to order the director to perform the act or duty.

B. No action may be commenced before sixty days after the plaintiff has given notice of the alleged violation to the director.

C. The court, in issuing a final order in an action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines it is appropriate.

D. Nothing in this section restricts any right that any person or class of persons may have under any other statute or under the common law to seek enforcement of an emission standard or limitation or to seek any other relief against the state or a political subdivision.

49-408. Air quality conformity; definition

A. Any revision to the state implementation plan adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T shall be no more stringent than required under those regulations. No state agency, metropolitan planning organization or local transportation agency shall take action that is more stringent than required under federal law in performing any of the following functions:

1. Determining which projects require conformity determinations pursuant to 40 Code of Federal Regulations, part 93, any state implementation plan revisions adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T, or the conformity requirements set forth in the federal implementation plan at 40 Code of Federal Regulations, part 52, subpart D.

2. Determining which projects constitute regionally significant projects within the meaning of any of the regulations identified in paragraph 1.

3. Making conformity determinations pursuant to any of the regulations identified in paragraph 1.

B. Notwithstanding any other provisions of this section, the director may adopt consultation procedures for the public or affected agencies which supplement the requirements of 40 Code of Federal Regulations, part 51,

subpart T.

C. For purposes of this section "local transportation agency" means any city, town, county or other local or regional government or agency that receives federal funds designated under title 23 United States Code or the federal transit act.

ARTICLE 2. STATE AIR POLLUTION CONTROL

49-421. Definitions

In this article, unless the context otherwise requires:

1. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, windborne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.

2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, or obscures visibility, or which in any way degrades the quality of the ambient air below the standards established by the director.

3. "Department" means the department of environmental quality.

4. "Director" means the director of environmental quality.

5. "Hearing board" means the state air pollution control hearing board.

6. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

7. "Special inspection warrant" is an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the director or his deputies, authorizing him to enter into or upon any public or private property for the purpose of making an inspection authorized by law.

49-422. Powers

A. In addition to any other powers vested in it by law, the department may:

1. Accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter. All monies resulting therefrom shall be deposited in the state treasury to the account of the department.

2. Secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise to carry out the purposes of this chapter.

3. Require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the director either:

(a) Determines that monitoring, sampling or other studies are necessary to determine the effects of the source on levels of air pollution.

(b) Has reasonable cause to believe a violation of this chapter, rules adopted pursuant to this chapter or a permit issued pursuant to this chapter has been committed.

(c) Determines that those studies or data are necessary to accomplish the purposes of this chapter, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.

B. The director shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution which may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424, subsection A or section 49-425, subsection A. In the development of the rules, the director shall consider the cost and effectiveness of the monitoring, sampling or other studies.

C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the director may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the director shall consider the relative cost and accuracy of any alternatives which may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The director may require such monitoring, sampling or other quantification by permit or order if the director determines in writing that all of the

following conditions are met:

1. The actual or potential emissions or air pollution may adversely affect public health or the environment.

2. A monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.

3. An adequate scientific basis for the monitoring, sampling or quantification method exists.

4. The monitoring, sampling or quantification method is reasonably accurate.

5. The cost of the method is reasonable in light of the use to be made of the data.

D. Orders issued and permit conditions imposed pursuant to this section shall be appealable to the hearing board in the same manner as that prescribed for orders of abatement in sections 49-434 and 49-435 and for permit conditions in section 49-428.

49-423. Hearing board

A. There shall be an air pollution control hearing board appointed by the governor pursuant to section 38-211.

B. The hearing board shall consist of five members. The five members shall be knowledgeable in the field of air pollution. At least one member of the board shall be an attorney licensed to practice law in this state. At least three members shall not have a substantial interest, as defined in section 38-502, in any person required to obtain a permit pursuant to this article. At least one member of the board shall be a registered engineer. Each board member shall serve for a term of three years. The terms shall expire on the third Monday in January of the appropriate year.

C. The hearing board shall select a chairman and vice-chairman and such other officers as it deems necessary.

D. Hearing board members shall receive compensation as prescribed pursuant to section 38-611.

49-424. Duties of department

The department shall:

1. Determine whether the meteorology of the state is such that airsheds can be reasonably identified and air pollution, therefore, can be controlled by establishing air pollution control districts within well defined geographical areas.

2. Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use, and economic feasibility of air-cleaning devices, the effect on human health and danger to property from air contaminants, the effect on industrial operations of remedial measures, and other matters necessary to arrive at a better understanding of air pollution and its control. In a county with a population in excess of one million two hundred thousand persons, the department shall locate a monitoring system in at least two remote geographic sites.

3. Determine the standards for the quality of the ambient air and the limits of air contaminants necessary to protect the public health, and to secure the comfortable enjoyment of life and property by the citizens of the state or in any defined geographical area of the state where the concentration of air pollution sources, the health of the population, or the nature of the economy or nature of land and its uses so require, and develop and transmit to the county boards of supervisors minimum state standards for air pollution control.

4. Conduct investigations, inspections and tests to carry out the duties of this section under the procedures established by this article.

5. Hold hearings relating to any aspect of or matter within the duties of this section, and in connection therewith, compel the attendance of witnesses and the production of records under the procedures established by section 49-432.

6. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state.

7. Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution.

8. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.

9. Compile and publish from time to time reports, data, and statistics with respect to those matters studied

and investigated by the department.

49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

49-426. Permits; duties of director; exceptions; applications; objections; fees

A. A permit shall:

1. Be issued by the director in compliance with the terms of this section.

2. Be required for any person seeking a compliance extension pursuant to section 49-426.03, subsection B, paragraph 3 and section 112(a)(5) of the clean air act and for any person commencing construction, operating or making a modification to any source, except as prescribed in subsection B of this section or section 49-426.01.

B. The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which, in the aggregate with other such equipment of the applicant at the same location or property other than a one or two family residence, is rated at less than five hundred thousand British thermal units per hour. The director may establish by rule additional sources or classifications of sources for which a permit is not required. The director shall not adopt such a rule unless the director finds that the source or class of sources will have an insignificant adverse impact on air quality. In adopting these rules, the director may consider any rule that is adopted by the administrator pursuant to section 502 of the clean air act and that exempts one or more source categories from the requirement to obtain a permit.

C. Every application for a permit shall be filed in the manner and form prescribed by the director, and shall contain all the information necessary to enable the director to make the determination to grant or deny such application. The director shall establish by rule requirements for permit applications, including a standard application form. The director shall establish by rule requirements for applications for general permits. An application shall include a compliance plan that describes how the applicant will comply with all of the applicable requirements of this chapter and the clean air act, including a schedule of compliance and a schedule under which progress reports will be submitted to the director at least every six months. The director may require that such application include all sources that are used or to be used by the applicant in a certain process or a single facility or location. Before acting on an application for a permit, the director may require the applicant to furnish further information or further plans or specifications. The director shall act, within a reasonable time, on such application and shall notify the applicant in writing of the proposed approval or denial of such application, except that the director may have a reasonable period of time in which to gather information, inspect premises, and issue such permits. The director shall adopt rules that establish procedures for determining when applications are complete, for processing applications and for reviewing permit actions. The director shall also establish by rule criteria for determining reasonable times for processing permit applications. Rules adopted pursuant to this subsection shall conform to the requirements of section 505(a) of the clean air act.

D. The director shall give notice of the proposed permit once each week for two consecutive weeks in two newspapers of general circulation in the county in which the source is or will be located. The notice shall describe the proposed permit and air contaminants to be emitted and shall state that any person may submit comments on the proposed permit and may request a public hearing. The director shall require the applicant at the time of the first notice to post the site where the source is or may be located. If permitted by federal, state and local law, the posting shall be prominently placed at a site that is under the applicant's legal control and that is adjacent to the nearest

public roadway. The posting shall be visible to the public using the public roadway and shall contain the information in the notice that is published by the director. If a public hearing is requested, the director shall require the applicant to place an additional posting that provides notice of the public hearing. A posting shall be maintained until the public comment period on the proposed permit is closed. The director shall make available to the public notices of proposed permits. Each public notice that is issued under this chapter shall be mailed to the permit applicant, to the affected federal, state and local agencies and to those persons who have requested in writing copies of proposed permit action notices. During the public comment period, any person may submit a request to the department to conduct a public hearing for the purpose of receiving oral or written comments on the proposed permit. A written comment shall state the name and mailing address of the person, shall be signed by the person, his agent or his attorney and shall clearly set forth reasons why the permit should or should not be issued. Grounds for comment are limited to whether the proposed permit meets the criteria for issuance prescribed in this section or in section 49-427. The department shall consider and prepare written responses to all comments received during the public comment period including comments made at a public hearing conducted by the department. At the time a final permit decision is made, copies of the department's responses shall be made available to the applicant and any person who commented on the proposed permit.

E. Permits or revisions issued pursuant to this section or section 49-426.01 may be issued subject to such terms and conditions as are consistent with the requirements of this article, article 1 of this chapter and the clean air act and are found by the director to be necessary, following public notice and an opportunity for a public hearing as provided in subsection D or H of this section or in section 49-426.01, and subject to payment of a reasonable fee to be determined as follows:

1. For a source that is required to obtain a permit pursuant to title V of the clean air act, the director shall establish by rule a system of fees that is consistent with and equivalent to that prescribed by section 502 of the clean air act. These rules shall prescribe procedures for increasing the fee each year by the percentage if any by which the consumer price index for the immediately preceding calendar year exceeds the consumer price index for calendar year 1989.

2. For a facility that is required to obtain a permit pursuant to this chapter but that is not required to obtain a permit pursuant to title V of the clean air act, the director shall determine a fee based on the total actual cost of processing the permit application, but not exceeding twenty-five thousand dollars.

The director shall establish an annual inspection fee, not to exceed the average cost of inspection. The director shall adopt, by rule, criteria for determining fees and for public hearings.

F. Permits issued pursuant to this section shall be issued for a period of five years.

G. Except as provided in section 49-808, subsection E and subsection B of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel shall first obtain a permit from the director. Any permit issued by the director under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.

2. The frequency and types of fuel testing to be conducted by the person.

3. The frequency and type of emissions testing or monitoring to be conducted by the person.

4. Requirements for record keeping and reporting.

5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning used oil, used oil fuel, hazardous waste or hazardous waste fuel.

H. The director may issue a general permit for a defined class of facilities if the class contains a large number of facilities that are substantially similar in nature and that have substantially similar emissions and if the following conditions are met:

1. A general permit shall comply with all of the requirements for permits prescribed by this section except for the requirements of subsection D of this section and shall be consistent with the clean air act.

2. The director shall give notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county. The notice shall describe the proposed general permit, the general class of sources that would be subject to the proposed permit and the air contaminants to be emitted. The notice shall also state that any person may submit comments on the proposed general permit and may request a public hearing. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the general permit should or should not be issued. Grounds for comment are limited to whether the proposed general permit meets the criteria for issuance prescribed in this section or section 49-427.

3. On issuance of a general permit any person seeking to permit a source under this subsection shall submit

an application pursuant to subsection C of this section.

4. If the director approves an application to be permitted under a general permit, the director shall provide notice of the approval in a newspaper of general circulation in the county in which the source is or will be located.

5. If a person violates a general permit, the director may require the source to obtain a permit pursuant to subsection A of this section.

6. A general permit may be revoked or revised at any time by the director if necessary to comply with this chapter. If the director revokes or revises a general permit, the director shall notify all persons whose sources are affected by the revocation or revision and shall include notice of procedures to obtain a permit pursuant to subsection A of this section or notice of procedures for compliance with the revisions.

7. The director by rule shall adopt procedures for the issuance of general permits.

8. The director may adopt conditions in a general permit applicable to sources located in a specified geographic area either independently of or upon petition by a county air pollution control officer.

I. Permits issued pursuant to this section shall contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.

2. Enforceable emission limitations and standards.

3. A schedule for compliance, if applicable.

4. The requirement to submit at least every six months the results of any required monitoring.

5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

J. The director may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

K. If an applicant has submitted a timely and complete application for a permit required under this section, but final action has not been taken on that application, failure to obtain a permit shall not be a violation of this chapter unless the delay in final action is due to the failure of the applicant to submit information required or requested to process the application. This subsection does not apply to any person required to obtain a permit before commencing construction of a source as required under this section or any person seeking a permit revision as provided under section 49-426.01.

L. The director may issue a single permit authorizing emissions from similar operations at multiple temporary locations, if the permit includes conditions that will assure compliance with all applicable requirements of this chapter and the clean air act at all locations. Any permit issued pursuant to this subsection shall require the applicant to notify the director in advance of each change in location. In issuing a single permit, the director may require a separate permit fee for operations at each location.

M. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major source, the director shall require revisions to the permit to incorporate applicable standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The director shall require any revisions as expeditiously as practicable, but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of standards and regulations is after the expiration of the permit. Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

N. Any permit issued pursuant to the requirements of this article and title V of the clean air act to a unit subject to the provisions of title IV of the clean air act shall include conditions prohibiting all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or by the designated representative of the owners or operators.

2. Exceedances of applicable emission rates.

3. The use of any allowance prior to the year for which it was allocated.

4. Contravention of any other provision of the permit.

49-426.01. Permits; changes within a source; revisions

A. The director shall establish by rule provisions to allow changes within a permitted source without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.

2. The changes do not result in an emission that is greater than the emissions allowed under the permit.

3. The source provides the director with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.

4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section. Rules adopted pursuant to this section at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act and may prescribe a different time limit for notifications associated with emergency conditions.

B. A permit issued pursuant to section 49-426 may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or termination or a notification filed pursuant to subsection A of this section does not stay an effective permit condition. The director may require that the applicant provide in writing within a reasonable time any information that the director identifies as necessary for the director to determine if cause exists for revising, revoking and reissuing, or terminating the permit or for determining compliance with permit conditions.

C. The director shall establish by rule procedures related to public review of proposed changes to a source as provided in subsection A of this section and proposed permit revisions as provided in subsection B of this section. These rules at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act.

49-426.02. Permit shield

The director shall establish by rule conditions under which compliance with a permit or permit revision issued pursuant to this chapter constitutes compliance with the applicable requirements of this chapter and the clean air act.

49-426.03. Enforcement of federal hazardous air pollutant program; definitions

A. The list of hazardous air pollutants in section 112(b)(1) of the clean air act is adopted as the list of federally listed hazardous air pollutants that will be subject to the program adopted pursuant to subsection B of this section. Within one year after the administrator adds or deletes a pollutant pursuant to section 112(b)(2) or (3) of the clean air act the director shall adopt those revisions for the list adopted pursuant to this subsection unless the director finds that there is no scientific evidence to support the revision.

B. By November 1, 1993, the director shall adopt by rule a program for administration and enforcement of the federal hazardous air pollutant program established by section 112 of the clean air act. The program shall be consistent with and meet the requirements of section 112 of the clean air act and shall contain the following provisions:

1. No person may obtain a permit or permit revision to modify a major source of federally listed hazardous air pollutants or to construct a new major source of federally listed hazardous air pollutants, unless the director determines that the person will install the maximum achievable control technology for the modification or new major source. For purposes of this paragraph, a major source of federally listed hazardous air pollutants means a major source as defined in section 112(a)(1) of the clean air act and implementing regulations adopted by the administrator. A new or modified major source of federally listed hazardous air pollutants means a major source that commences construction or a modification after rules adopted by the director pursuant to this subsection become effective pursuant to section 41-1032. A physical change to a source or change in the method of operation of a source is not a modification subject to this paragraph or paragraph 2 of this subsection if the change complies with section 112(g)(1) of the clean air act.

2. Until the administrator adopts emissions standards establishing the maximum achievable control technology for a source category or subcategory that includes a source subject to paragraph 1 of this subsection, the director shall determine the maximum achievable control technology for the modification of new major source on a case-by-case basis. If the director determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

3. If an existing source submits an application pursuant to section 49-426 which demonstrates that the source has achieved a reduction of ninety per cent or more of federally listed hazardous air pollutants or ninety-five per cent in the case of federally listed hazardous air pollutants that are particulates, the director shall issue a permit or permit revision allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated by the administrator under section 112(d) of the clean air act. The application shall comply with section 112(i)(5) of the clean air act and implementing regulations adopted by the administrator. The alternative emission limitation shall apply for a period of six years from the compliance date otherwise applicable to the source under section 112(d) of the clean air act.

4. If the administrator fails to adopt a standard for a source category or subcategory within eighteen months after the deadline established for that category or subcategory pursuant to section 112(e)(1) and (3) of the clean air act, the owner or operator of an existing major source in the category or subcategory shall be required to submit a permit application for such source pursuant to section 49-426, and the director, acting in accordance with the procedures adopted pursuant to section 49-426, shall be required to issue a permit establishing maximum achievable control technology for the affected source on a case-by-case basis or, in the alternative, an alternative emission limitation pursuant to paragraph 3 of this subsection. If the director determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

5. When the administrator adopts and makes effective standards pursuant to section 112(d) or 112(f) of the clean air act the director shall adopt those standards in the same manner as prescribed by the administrator.

6. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the director shall not require compliance with a numeric emission limit for that pollutant but shall instead require compliance with a design, equipment, work practice or operational standard, or a combination of those standards. The provision adopted pursuant to this paragraph shall not apply to sources or modifications that commence construction after the permit program established pursuant to section 49-426 becomes effective under section 502(h) of the clean air act.

C. Where the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall be adopted by the director and shall apply to the regulation of those source categories under subsection B of this section.

D. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the director shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

E. When the administrator makes one of the following findings pursuant to section 112(n)(1)(A) of the clean air act the finding is effective for purposes of the state's administration and enforcement of the federal hazardous air pollutant program in the same manner as prescribed by the administrator:

1. A finding that regulation is not appropriate or necessary.
2. A finding that alternative control strategies should be applied.

49-426.04. State list of hazardous air pollutants

A. The state list of hazardous air pollutants that are subject to regulation consists of all of the following:

1. Hazardous air pollutants that are designated by the director by rule if the director finds all of the following:

(a) There is scientifically reliable evidence on the health or environmental effects of the pollutant adequate to support the designation. The director shall rely on technical protocols appropriate for the development of the list of hazardous air pollutants and shall base the designation on credible medical and toxicological evidence that has been subjected to peer review. Evidence shall be considered scientifically reliable only if it demonstrates adverse effects to human health or adverse environmental effects from an air pollutant at concentrations that are likely to occur in the environment as a result of emissions of the pollutant into the ambient air.

(b) Emissions, ambient concentrations, bioaccumulation or deposition of the pollutant result in adverse effects to human health or adverse environmental effects.

(c) An adequate and reliable methodology exists for quantifying emissions and ambient concentrations of the pollutant.

2. Federally listed hazardous air pollutants.

B. The director of the department of environmental quality shall file with the secretary of state the list of substances for which ambient air quality guidelines are recommended by the department of health services as of July 15, 1992. A true copy of the list that is filed in the office of the secretary of state shall be on file in the department of environmental quality and shall be available for examination by the public during regular business hours. The director shall review the list of substances to identify which substances are federally listed hazardous air pollutants. The director shall review those substances that are not federally listed hazardous air pollutants to preliminarily determine those substances that meet each of the criteria for designation as a hazardous air pollutant as prescribed by subsection A, paragraph 1, subdivisions (a), (b) and (c). If the director determines that a substance meets the criteria for designation, the director shall prepare a written statement of the basis for the preliminary determination

and, within thirty days of the issuance of the preliminary determination, shall propose a rule to list the substance as a hazardous air pollutant. The director shall adopt those rules not later than November 1, 1993.

C. Except in the case of federally listed hazardous air pollutants, the director may by rule rescind the designation of an air pollutant as a hazardous air pollutant if the director finds that any of the criteria specified in subsection A is not satisfied.

D. Any person may petition the director to designate any air pollutant as a hazardous air pollutant pursuant to subsection A. The director shall within six months of the receipt of such a petition begin a rule making to designate the pollutant as a hazardous air pollutant pursuant to subsection A, if the petitioner demonstrates or the director finds that all of the criteria specified in subsection A are satisfied.

E. Any person may petition the director to rescind the designation of an air pollutant as a hazardous air pollutant pursuant to subsection B. The director shall within six months of the receipt of such a petition begin a rule making to rescind the designation of the air pollutant as a hazardous air pollutant pursuant to subsection B, if the petitioner demonstrates or the director finds that any of the criteria specified in subsection A is not satisfied.

F. The director shall not designate a conventional air pollutant as a hazardous air pollutant. This subsection shall not apply to any of the following pollutants:

1. Any pollutant that independently meets the criteria of subsection A and is a precursor to a conventional air pollutant.

2. Any pollutant that is in a class of conventional air pollutants.

49-426.05. Designation of sources of hazardous air pollutants

A. The director may by rule designate a category of sources that are subject to the state program for control of hazardous air pollutants established pursuant to section 49-426.06. In order to designate a category of sources pursuant to this section, the director shall find that emissions of hazardous air pollutants from sources in the category individually or in the aggregate result in adverse effects to human health or adverse environmental effects. In determining whether emissions from a category of sources result in adverse effects to human health or adverse environmental effects, the director shall consider the following:

1. The number of persons likely to be exposed to emissions from sources in the category.

2. Whether the category should be limited to sources with the potential to emit hazardous air pollutants in amounts exceeding the thresholds set forth in section 49-426.06, subsection A, paragraph 2.

3. Whether based on the criteria set forth in this subsection, the category should be limited to sources located in a particular geographic area. The director shall to the maximum extent practicable define source categories so that they cover only those sources for which the finding required by this subsection has been made.

B. In addition to the other authority provided by this chapter, the director may require persons who own or operate sources in a category that the director reasonably believes may qualify for designation pursuant to subsection A of this section to provide the director with notification of the types and amounts of hazardous air pollutants emitted by those sources. The owner or operator of the source shall provide readily available data regarding emissions from the source but shall not be required to conduct performance tests, sampling or monitoring in order to respond to a request under this subsection. Inaccuracies in any notification provided pursuant to this subsection shall not be violations of this chapter, if the inaccuracies result from good faith efforts to identify hazardous air pollutants emitted by the source or to estimate the amount of hazardous air pollutants emitted by the source.

C. When a new source that is within a category that has not been designated pursuant to subsection A of this section submits an application for a permit pursuant to section 49-426, the director may suspend action on the application pending the designation of the category pursuant to subsection A of this section if all of the following conditions are satisfied:

1. The director makes the finding required by subsection A of this section for the category to which the source belongs.

2. The director provides notice of the director's intent to suspend action on the application to the applicant on or before the date that a completeness determination is due under section 49-426.

3. The applicant does not elect to comply with section 49-426.06, subsection C or D.

D. A decision by the director to suspend action on a permit application pursuant to subsection C of this section is appealable pursuant to section 49-428.

49-426.06. State program for control of hazardous air pollutants

A. By November 1, 1993, the director shall by rule establish a state program for the control of hazardous air pollutants that meets the requirements of this section. The program established pursuant to this section shall apply to the following sources:

1. Sources that emit or have the potential to emit with controls ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants.

2. Sources that are within a category designated pursuant to section 49-426.05 and that emit or have the potential to emit with controls one ton per year or more of any hazardous air pollutant or two and one-half tons per year of any combination of hazardous air pollutants.

B. After rules adopted pursuant to subsection A of this section become effective pursuant to section 41-1032, a person shall not commence the construction or modification of a source that is subject to this section without first obtaining a permit or permit revision that complies with section 49-426 and subsection C or D of this section. For purposes of determining whether a change constitutes a modification, the director shall by rule establish appropriate de minimis amounts for hazardous air pollutants that are not federally listed hazardous air pollutants. In establishing de minimis amounts, the director shall consider any relevant guidelines or criteria promulgated by the administrator. A physical change to a source or change in the method of operation of a source is not a modification subject to this section if the change satisfies any of the following conditions:

1. The change complies with section 112(g)(1) of the clean air act.

2. The change, together with any other changes implemented or planned by the source, qualifies the source for an alternative emission limitation pursuant to section 112(i)(5) of the clean air act.

3. The change is required under a standard imposed pursuant to section 112(d) or 112(f) of the clean air act and the change is implemented after the administrator promulgates the standard.

C. A permit or permit revision issued to a new or modified source that is subject to the state hazardous air pollutant program under subsection A, paragraph 1 of this section shall impose the maximum achievable control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of maximum achievable control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. A permit or permit revision issued to a new or modified source that is subject to the state hazardous air pollutant program under subsection A, paragraph 2 of this section shall impose hazardous air pollutant reasonably available control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the director shall not require compliance with a numeric emission limit for the pollutant but shall instead require compliance with a design, equipment, work practice or operational standard, or a combination thereof. Standards imposed pursuant to this subsection shall apply only to hazardous air pollutants emitted in amounts exceeding the de minimis amounts established by the administrator or by the director pursuant to subsection B of this section. The director shall not impose a standard under this subsection that would require the application of measures that are incompatible with measures required under a standard imposed pursuant to section 49-426.03, subsection B.

D. If the owner or operator of a new source or modification subject to this section establishes that the imposition of maximum achievable control technology or hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects by conducting a scientifically sound risk management analysis and submitting the results to the director with the permit application for the new source or modification, the director shall exempt the source from the imposition of such technology. The risk management analysis may take into account the following factors:

1. The estimated actual exposure of persons living in the airshed of the source.
2. Available epidemiological or other health studies.
3. Risks presented by background concentrations of hazardous air pollutants.
4. Uncertainties in risk assessment methodology or other health assessment techniques.
5. Health or environmental consequences from efforts to reduce the risk.
6. The technological and commercial availability of control methods beyond those otherwise required for the source and the cost of such methods.

E. Where maximum achievable control technology or hazardous air pollutant reasonably available control technology has been established in a general permit for a defined class of sources pursuant to subsection C of this section and section 49-426, subsection H, the owner or operator of a source within that class may obtain a variance

from the standard by complying with subsection D of this section at the time the source applies to be permitted under the general permit. If the owner or operator makes the demonstration required by subsection D of this section and otherwise qualifies for the general permit, the director shall, in accordance with the procedures established pursuant to section 49-426, approve the application and issue a permit granting a variance from the specific provisions of the general permit relating to the standard. Except as otherwise modified by the variance, the general permit shall govern the source.

F. If the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall apply to the regulation of those source categories under subsection B of this section.

G. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the director shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

49-426.07. Imminent and substantial endangerment

Notwithstanding any permit granted pursuant to section 49-426.03 or 49-426.06, the director may seek injunctive relief as provided in section 49-462 on receipt of evidence that a source or combination of sources is presenting an imminent and substantial endangerment to public health or the environment.

49-426.08. Research program on hazardous air pollutants

A. In cooperation with the department of health services, the United States environmental protection agency and the national academy of sciences, the department of environmental quality shall undertake a comprehensive research program to evaluate the existing risk to public health related to hazardous air pollution and to provide options and recommendations for programs to control the release of hazardous substances into the ambient air. In developing the research program, the department shall prepare a research plan and subject that plan to national peer review. The research program shall be funded by monies from the air quality fund established pursuant to section 49-551 and shall include all of the following:

1. Identification of hazardous substances that are or may be emitted into the ambient air in this state and that present, through inhalation or other routes of exposure, a threat of adverse health effects or adverse environmental effects whether through ambient concentration, bioaccumulation, deposition or otherwise.

2. Identification and evaluation of methods for conducting ambient air monitoring, measuring emissions and performing related analyses.

3. A statewide survey to determine, through direct measurement and appropriate estimation techniques, concentrations of those hazardous substances in the ambient air and to estimate source contributions to ambient concentrations from permitted, nonpermitted and natural sources as well as background concentrations.

4. A statewide survey to identify permitted and nonpermitted sources of these substances and to gather information necessary to quantify emissions.

5. Identification and evaluation of alternative risk assessment methodologies.

6. Evaluation of alternative methods to perform atmospheric modeling and determine receptor-source relationships.

7. An assessment of residual risk after the implementation of controls during the terms of the research program.

8. An evaluation of estimated actual risk from exposure to those substances in this state.

9. An evaluation of the feasibility of, need for and potential methods for establishing ambient air quality standards or health based guidelines for those substances.

10. A public education program to provide information and increase public awareness of hazardous air pollutants and the research program.

11. Other data that the director deems useful or necessary for the purpose of developing the research program.

B. Not later than September 1, 1995, the department shall publish a report of its findings and recommendations resulting from the research program conducted pursuant to this section. The report shall include recommendations as to what changes, if any, are needed to current law to protect public health and the environment from the effects of exposure to hazardous air pollution and shall consider the cost of achieving such changes and any non-air quality health and environmental impacts and energy requirements that may result from the changes. The director shall submit the report to the governor, the president of the senate and the speaker of the house of

representatives and shall submit the report for national peer review. The director shall conduct meetings throughout this state in order to present the report to members of the general public and to receive comments.

49-427. Grant or denial of applications; revisions

A. The director shall deny a permit or revision if the applicant does not show that every such source is so designed, controlled, or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of the provisions of this article and the rules adopted by the director.

B. Prior to acting on an application for a permit, the director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the source described in the application. In the event of such a requirement, the director shall notify the applicant in writing of the type and characteristics of such facilities.

C. In acting upon an application for a permit renewal, if the director finds that such a source has been constructed not in accordance with any prior permit or revision issued pursuant to section 49-426.01, the director shall require the person to obtain a permit revision or shall deny the application for such permit. The director shall not accept any further application for a source so constructed until the director finds that such source has been reconstructed in accordance with the prior permit or a revision, or until a revision to the permit has been obtained.

D. After a decision on a permit or revision, the director shall notify the applicant and any person who filed a comment to the permit pursuant to section 49-426 or the revision pursuant to section 49-426.01 in writing of the decision, and if the permit is denied, the reasons for such denial. Service of this notification may be made in person or by first class mail. The director shall not accept a further application unless the applicant has corrected the reasons for the objections specified by the director as reasons for such denial.

49-428. Appeals of permit actions

A. Within thirty days after notice is given by the director of approval, denial or revocation of a permit, permit revision or conditional order, the applicant and any person who filed a comment on the permit or permit revision pursuant to section 49-426, subsection D, or on the conditional order pursuant to section 49-438, subsection C, may petition the hearing board, in writing, for a public hearing, which shall be held within thirty days after receipt of the petition. The hearing board, after notice and a public hearing, may sustain, modify or reverse the action of the director.

B. Any person having an interest that is or may be adversely affected may commence a civil action in superior court against the director alleging that the director has failed to act in a timely manner as provided in section 49-426, subsection C. No action may be commenced before sixty days after the plaintiff has given notice to the director. The court has jurisdiction to require the director to act without additional delay.

49-429. Permit transfers; notice; appeal

A. A permit shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one source to another.

B. Subsection A shall not apply to mobile or portable source which is transferred from one location to another after notification to the department of the transfer.

C. A permit may be transferred from one person to another whether by operation of law or otherwise if the person who holds the permit notifies the director in writing before the transfer. The notice shall be in writing and shall include the name, address, telephone number and statutory agent of the person to whom the permit will be transferred, the effective date of the proposed transfer and other information the director may determine to be necessary by rule. The director shall prescribe procedures for this notice.

D. If the director determines that the transferee is not capable of operating the source in compliance with the requirements of this article, rules adopted under this article and the conditions established in the permit, the transfer shall be denied. In order for the denial to be effective, notice of the director's denial, including the reasons for the denial, shall be issued within ten working days of the director's receipt of the notice of proposed transfer.

E. Denial of a permit transfer is appealable by the transferor and the transferee to the air pollution control hearing board in the same manner as prescribed for denial of a permit in section 49-428.

49-430. Posting of permit

A person who has been granted an operating permit, shall firmly affix such permit, an approved facsimile of such permit, or other approved identification bearing the permit number upon such machine, equipment, incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises.

49-431. Notice by building permit agencies

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant for a building permit to determine if an installation permit will possibly be required under the provisions of section 49-426. If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the department and shall furnish a copy of such notice to the county air pollution control officer and the department.

49-432. Classification and reporting; confidentiality of records

A. The director, by rule, shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, the nature and duration of emissions and such other information as is relevant to air pollution and deemed necessary by the director.

B. The owner, lessee or operator of a source under the jurisdiction of the department shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable, necessary, and required to determine compliance in a manner acceptable to the director, and shall supply monitoring information as directed in writing by the director. Such devices shall be available for inspection by the director, or his deputies, during all reasonable times.

C. The department shall make available to the public any records, reports or information obtained from any person pursuant to this chapter, including records, reports or information obtained or prepared by the director or a department employee, except that the information or any particular part of the information shall be considered confidential on either of the following:

1. Notice from the person accompanying the information or a particular part of the information that the information, if made public, would divulge the person's trade secrets as defined in section 49-201 or other information that is likely to cause substantial harm to the person's competitive position.

2. A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action filed under this title in superior court.

D. If the director on his own or following a request for disclosure disagrees with the confidentiality notice, he may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the person shall be served with a copy of the court filing and has twenty business days from the date of service to request a hearing on whether a court order should be issued. The hearing shall be conducted in camera, and any order resulting from the hearing is appealable as provided by law. The director may not disclose the confidential information until a court order authorizing disclosure has been obtained and becomes final. The court may award costs of litigation including reasonable attorney and expert witness fees to the prevailing party.

E. Notwithstanding subsection C, the department shall make available to the public the following information obtained from any person pursuant to this chapter:

1. The name and address of any permit applicant or permittee.

2. The chemical constituents, concentrations and amounts of any emission of any air contaminant.

3. The existence or level of a concentration of an air pollutant in the environment.

F. Notwithstanding subsection C, the director may disclose, with an accompanying confidentiality notice, any records, reports or information obtained by the director or department employees to:

1. Other state employees concerned with administering this chapter or if the records, reports or information is relevant to any administrative or judicial proceeding under this chapter.

2. Employees of the United States environmental protection agency if the information is necessary or required to administer and implement or comply with federal statutes or regulations.

49-433. Special inspection warrant

A. The director and his deputies charged under this chapter or the rules and regulations adopted pursuant to this chapter with powers or duties involving inspection of real or personal property including buildings, building premises and building contents for the purpose of air pollution control shall be authorized to present themselves before a magistrate and apply for, obtain and execute special inspection warrants. Such inspections shall be limited to property other than the interior or structures used as private residences.

B. Upon showing by the affidavit of the director or his deputies that consent to entry for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate for inspection of public or private, real or personal properties. Such warrants shall not be necessary in the case of an emergency where there is an imminent and substantial endangerment to the health of persons.

C. The warrant shall be in substantially the following form: "County of ++++++++++++++, state of Arizona to the director or any deputy director in the state of Arizona, proof by affidavit having been this day made before me by (person or persons whose affidavit has been taken) that in and upon certain premises in the (city, town or county) of ++++++++++++++ and more particularly described as follows: (describe the premises with reasonable particularity) there now exists a reasonable governmental interest to determine if such premises comply with (section ++++++++++++++ of the Arizona Revised Statutes) and/or (section ++++++++++++++ of regulation or ordinance). You are therefore commanded in the day time (or during reasonable business hours), to make an inspection of said premises as soon as practicable. Date, signature and title of office." The endorsement on the warrant shall be in substantially the following form: "Received by me ++++++++++++++, 19++, at ++++++ o'clock ++++++. (Name of director or deputy director)." The return of officer shall be in substantially the following form: "I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings). Dated this ++++++++++++ day of ++++++++++, 19++ (Name of director or deputy director)."

D. The warrant may be served by the director or his deputies mentioned in its directions, but by no other person except in aid of the director or his deputies, on his requiring it, the director or his deputies being present and acting in its execution.

E. A warrant shall be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of that time, the warrant shall unless executed be void.

F. Any person who wilfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this article is guilty of a petty offense.

49-435. Hearings on orders of abatement

A. An order of abatement issued by the director shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to section 49-461 unless the person or persons named in such order shall have made a timely request for a hearing before the hearing board. If a hearing is requested, the hearing board shall hold the hearing within thirty days from receipt of the request unless such time is extended by the hearing board. Written notice of the time and place of the hearing shall be sent by the hearing board to the person or persons requesting the hearing and to the director, at least fifteen days before the hearing.

B. If the board, after the hearing, determines that the act or acts set forth in the order constitute a violation of any provision of this chapter or of the rules and regulations adopted pursuant to this chapter or any requirement of an operating or conditional permit issued pursuant to this chapter and that no conditional permit is justified, the board shall affirm or modify the order for abatement. The order may be conditional and require a person to refrain from the particular act or acts unless certain conditions are met.

49-437. Conditional orders; standards; rules

A. The director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of this article, any rule adopted pursuant to this article, or any requirement of a permit issued pursuant to this article if the director makes each of the following findings:

1. Issuance of the conditional order will not endanger public health or the environment, or impede attainment of the national ambient air quality standards.

2. Either of the following is true:

(a) There has been a breakdown of equipment or upset of operations beyond the control of the petitioner; the source was in compliance before the breakdown or upset; and the breakdown or upset may be corrected within a reasonable time.

(b) There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.

B. The director shall adopt rules necessary for the issuance of conditional orders. Such rules shall specify the minimum requirements for petitions, and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of the state implementation plan, the rules adopted by the director shall provide for a public hearing to receive comments on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this article, the rules adopted by the director shall conform to the procedures established for permit revisions pursuant to section 49-426.01.

49-438. Petition for conditional order; publication; public hearing

A. A person who seeks a conditional order shall file a petition with the director.

B. If the issuance of the conditional order requires a public hearing, the director shall set a hearing date within thirty days after the filing of the petition. The hearing date shall be within sixty days after the filing of the petition.

C. Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in section 49-444. The notice shall state that any person may submit comments on the petition. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the petition should or should not be granted. Grounds for comment shall be limited to whether the petition meets the criteria for issuance of a conditional order prescribed in section 49-437.

49-439. Decisions on petitions for conditional order; terms and conditions

A. Within thirty days after the conclusion of the hearing held pursuant to section 49-438, subsection B, or, if no hearing is held, within sixty days after the filing of the petition, the director shall deny the petition or grant the petition on such terms and conditions as the director deems appropriate.

B. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include, but not be limited to:

1. A detailed plan for completion of corrective steps needed to conform to the provisions of this article, the rules adopted pursuant to this article, and the requirements of the permit issued pursuant to this article.

2. A requirement that necessary construction shall begin as expeditiously as practicable.

3. Such written reports as may be required.

4. The right to make periodic inspection of the facilities for which the conditional order is granted.

C. A reasonable fee as may be prescribed by the director shall be deposited in the air pollution control permit fund established in section 49-555.

49-440. Term of conditional order; effective date

A. A conditional order issued by the director shall be valid for such period as the director prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this article and title V of the clean air act, and three years in the case of any other source that is required to obtain a permit pursuant to this article.

B. A holder of a conditional order may petition the director for renewals of such order. The total term of such renewals and the initial period of such order shall not exceed three years from the date of initial issuance of such order. Such petition may be filed at any time not more than sixty days nor less than thirty days prior to the expiration of such order. The director, within thirty days of receipt of such petition, shall renew the conditional order for one year if the petitioner is in compliance with and conforming to the terms and conditions imposed pursuant to section 49-439. The director may refuse to renew the conditional order, if after a public hearing held within thirty days of receipt of such petition the director finds that the petitioner is not in compliance with and conforming to the terms and conditions of the conditional order. If, after a period of three years from the date of original issuance, the petitioner is not in compliance with and conforming to such terms and conditions, the director may renew such conditional order for a total term of two additional years if the director finds that such failure to comply and conform is due to conditions beyond the control of such petitioner.

C. If the director amends or adopts any rule imposing conditions on the operation of an air pollution source which have become effective as to the source by reason of the action of the director or otherwise, and which require the implementation of control strategies necessitating the installation of additional or different air pollution control equipment, the director may renew a conditional order for an additional term. The term of the renewal shall be

governed by the preceding subsections of this section, except that the total term of the renewal shall not exceed two years.

D. Except as provided in paragraphs 1 and 2 of this subsection, a conditional order issued by the director shall be effective when issued if:

1. The conditional order varies from the requirements of the state implementation plan, the conditional order shall be submitted to the administrator as a revision to the state implementation plan pursuant to section 110(l) of the clean air act, and shall become effective upon approval by the administrator.

2. The conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to title V of the clean air act, the conditional order shall be submitted to the administrator if required by section 505 of the clean air act, and in such case shall be effective at the end of the review period specified in such section, unless objected to within such period by the administrator.

49-441. Suspension and revocation of conditional order

If the terms and conditions of the conditional order are being violated, the director may seek to revoke or suspend the conditional order granted. In such event, the director shall serve notice of such violation on the holder of the conditional order in the manner provided in section 49-444. The notice shall specify the nature of such violation and the date on which a hearing will be held to determine if such a violation has occurred and whether the conditional order should be suspended or revoked. The date of the hearing shall be within thirty days from the date the notice is served upon the holder of the conditional order.

49-442. Decisions of hearing board; subpoenas; time limitations; revocation

A. All decisions of the hearing board, including the majority opinion and all concurring and dissenting opinions, shall be in writing and shall be of public record.

B. A majority of the total membership of the hearing board shall concur in a decision for it to have effect.

C. The chairman or, in his absence, the vice chairman may issue subpoenas to compel attendance of any person at a hearing and require the production of books, records and other documents material to a hearing. Obedience to subpoenas may be enforced pursuant to section 12-2212.

D. Subject to the approval of the director, the hearing board may adopt a manual of procedures governing its operation.

E. Decisions of the hearing board shall become effective not less than thirty days after they are issued unless:

1. A rehearing is granted which shall have the effect of staying the decision.

2. It is determined that an emergency exists which justifies an earlier effective date.

F. The hearing board may revoke or modify an order of abatement a permit or permit revision previously issued at the county level only after first holding a hearing within thirty days from the giving of notice of such hearing as provided in section 49-444.

G. When the department has asserted control pursuant to section 49-402 the hearing board may revoke or modify an order of abatement or a permit or permit revision previously issued at the county level only after first holding a hearing within thirty days from the giving of notice of such hearing as provided in section 49-444.

49-443. Judicial review; grounds; procedures

A. Judicial review of hearing board decisions shall be pursuant to the provisions of title 12, chapter 7, article 6, except as provided in this section.

B. Within thirty days after service of notice of a final decision or order of the board, or an order denying a rehearing timely applied for, any person who was a party of record in the proceedings before the board, including the director or department, may appeal therefrom to the superior court of Maricopa county and the scope of such review shall be determined pursuant to section 12-910.

C. A notice of appeal, designating the grounds therefore, and a demand in writing for a certified transcript of the testimony and exhibits shall be filed with the court and served on the board. After receipt of the demand, accompanied by payment of a fee of the current prevailing rate for transcript, and one dollar for certification thereof, the board shall make and certify the transcript and file it with the clerk of the court to which the appeal has been taken within thirty days, unless extended by agreement of the parties or order of the court.

D. When an appeal is taken from an order or decision of the board, such order or decision shall remain

in effect pending final determination of the matter, unless stayed by the court, on a hearing after notice to the board and upon a finding by the court that there is probable cause for appeal and that great or irreparable damage may result to the petitioner warranting such stay.

E. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-444. Notice of hearing; publication; service

A. Any notice of hearing required by this chapter shall be given by publication of a notice of hearing for at least two times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county.

B. If the hearing involves any violation of rules or regulations adopted pursuant to this chapter, or a conditional order therefrom then, in addition to the requirements of subsection A, the person allegedly committing or having committed the violation or requesting the conditional order shall be served personally or by registered or certified mail at least fifteen days prior to the hearing with a written notice of hearing.

49-447. Motor vehicle and combustion engine emission; standards

The director shall adopt rules and regulations setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines. Any rules or regulations promulgated pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines. This authority shall apply to implement the provisions of sections 28-955, 28-327 and 49-542.

49-448. Limitations

Nothing in this chapter shall be construed so as to:

1. Grant any jurisdiction or authority with respect to air contamination or pollution existing solely within commercial and industrial plants, works or shops owned by or under control of the person causing the air contamination or pollution.

2. Alter or in any other way affect the relations between employers and employees with respect to or concerning any condition of air contamination or pollution, except that a person using a supplemental control system or intermittent control system for purposes of meeting the requirements of an order under section 113 (d) or section 119 of the federal clean air act, as amended or for purposes of receiving an operating permit in the form of a primary nonferrous smelter order authorized under section 119 of the federal clean air act, as amended, may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

49-453. Air quality impact reports; filing

A. Every state agency, board and commission shall prepare an air quality impact report on a state funded project relating to transportation which it proposes to carry out or approve and which it determines may have a significant impact on air quality as it relates to carbon monoxide and ozone. The report shall contain the following information:

1. A description of the proposed project.
2. Any significant impact on air quality of the proposed project.
3. Significant environmental effects which cannot be avoided if the project is implemented.
4. Mitigation measures proposed to minimize any significant air quality effects.
5. Alternatives to the proposed project including car pooling or van pooling lanes and bicycle routes.
6. Any significant irreversible air quality changes which would be involved in the proposed project if it is implemented.
7. The known views of any local groups concerning the proposed project.

B. The report shall also contain a statement briefly indicating the reasons for determining that various effects of a project are not significant and consequently have not been discussed in detail in the impact report.

C. If authority over a project is shared jointly by an agency and a board or by an agency and a commission, the agency shall prepare the report.

D. This section does not apply to:

1. Emergency repairs to public service facilities which are necessary to maintain service.

2. Projects which are undertaken, carried out or approved by a state agency, board or commission to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been declared by the governor.

3. Projects related to the interstate highway system.

4. State projects involving existing facilities.

E. The report shall be filed with the director.

49-454. Adjusted work hours

A. A business which has five hundred or more employees at one site in a nonattainment area as defined in section 49-541 shall submit a schedule prior to October 1 of each year to the director which shows an adjusted work hour proposal that will reduce the level of carbon monoxide concentrations caused by vehicular travel.

B. A business which has one hundred or more employees at one site working in a nonattainment area as defined in section 49-541 may implement an adjusted work hour schedule in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

C. The director shall transmit the reports received pursuant to subsection A of this section to the committee on air quality compliance on or before December 1 of each year.

49-455. Permit administration fund

A. A permit administration fund is established in the state treasury consisting of fees, penalties and interest collected pursuant to this article. The director shall administer the fund. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

. B. Monies in the fund collected pursuant to sections 49-426, 49-426.01, 49-463 and 49-464 shall be used for the following:

1. In the case of fees collected pursuant to section 49-426, subsection F, paragraph 1, all reasonable direct and indirect costs required to develop and administer the permit program requirements of title V of the clean air act.

2. In the case of other fees, administering permits or revisions issued pursuant to section 49-426 or 49-426.01 or conducting inspections.

C. No more than five per cent of the monies in the fund may be used for the collection of monies, unless otherwise provided under title V of the clean air act.

D. No more than five per cent of the monies in the fund may be used for general administration of the fund unless otherwise provided under title V of the clean air act.

49-456. Technical assistance for small business; compliance advisory panel

A. Not later than November 15, 1992, after reasonable notice and a public hearing, the director shall submit to the administrator a plan establishing a small business stationary source technical and compliance assistance program consistent with and equivalent to the plan required under section 507 of the clean air act.

B. A compliance advisory panel is established consisting of seven members who are appointed for staggered five year terms as follows:

1. Two members who are appointed by the governor to represent the general public and who are not owners or representatives of owners of small business stationary sources.

2. Two members who are appointed by the speaker of the house of representatives and who are owners or who represent owners of small business stationary sources.

3. Two members who are appointed by the president of the senate and who are owners or who represent owners of small business stationary sources.

4. One member who is appointed by the director of the department of environmental quality to represent the department.

C. The panel shall:

1. Advise the director on the effectiveness of the small business stationary source technical and environmental compliance assistance program operated pursuant to this section and any such program operated by a county, including the identification of difficulties encountered and the degree and severity of enforcement.

2. Make periodic reports to the director and administrator concerning the compliance of the small business

stationary source technical and environmental compliance assistance program operated pursuant to this section and any such program operated by a county with the requirements of the paperwork reduction act (P.L. 96-511; 20 United States Code section 1221), the regulatory flexibility act (P.L. 96-354; 5 United States Code section 601) and the equal access to justice act (P.L. 96-481; 5 United States Code section 504).

3. Review information developed by the department and any county for small business stationary sources to assure that the information is understandable by the general public and advise the director of its findings.

4. Have staff from the small business stationary source technical and environmental compliance assistance program to develop and disseminate reports and advisory opinions.

49-460. Violations; production of records

When the director has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may request in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules adopted pursuant to this article.

49-461. Violations; order of abatement

When the director has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may serve upon such person by certified mail or in person an order of abatement or may file a complaint in superior court alleging a violation pursuant to section 49-463. The order shall state with particularity the act constituting the violation, shall state in its entirety the specific requirement, provision or rule violated, shall state the duration of the order and shall state that the alleged violator is entitled to a hearing, if such hearing is requested in writing within thirty days after the date of issuance of the order. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. An order issued under this section shall require the persons to whom it is issued to comply with the requirement, provision or rule as expeditiously as practicable. In the case of a source required to obtain a permit pursuant to this article and title V of the clean air act, the order shall require compliance no later than one year after the date the order was issued, and shall be nonrenewable.

49-462. Violations; injunctive relief

The attorney general, at the request of the director, shall file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, if the director has reasonable cause to believe that any of the following is occurring:

1. A person has violated or is in violation of any provision of this article, a rule adopted pursuant to this article or a permit issued pursuant to this article.

2. A person has violated or is in violation of an effective order of abatement.

3. A person is creating an imminent and substantial endangerment to the public health or the environment because of a release of a harmful air contaminant, unless that release is subject to enforcement under title 3, chapter 2, article 6.

49-463. Violations; civil penalties

A. A person who violates any provision of this article, any permit or permit condition issued pursuant to this article, any fee or filing requirement, any rule adopted pursuant to this article, an effective order of abatement issued pursuant to this article or any duty to allow or carry out inspection, entry or monitoring activities, is subject to a civil penalty of not more than ten thousand dollars per day per violation. The attorney general at the request of the director shall file an action in superior court to recover penalties provided for in this section.

B. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, if the director has notified the source of the violation and makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section is accomplished by the issuance of a notice of violation or order of abatement or by filing a complaint in superior court that alleges any violation described in subsection A of this

section.

C. In determining the amount of a civil penalty under this section, the court shall consider all of the following:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of that violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.
7. Payment by the violator of penalties previously assessed for the same violation.
8. Other factors the court deems relevant.

D. All penalties collected pursuant to this section shall be deposited in the air pollution control permit fund established in section 49-455.

49-464. Violation; classification; definitions

From and after October 31, 1994:

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 U.S.C. section 11002(a)(2) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the administrator or director has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.
2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant.

Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the director pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the director to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material after considering the following criteria:

1. The effect of the permit condition on public health and the environment.
2. The effect of the permit condition on the department's ability to enforce the permit program.
3. The effect of noncompliance with the permit condition on emissions.
4. The effect of the permit condition on the director's ability to determine a source's compliance status.

The director shall adopt the rules required by this subsection and section 49-514, subsection G by November 1, 1993.

H. A person who is required to obtain a permit before commencing construction of a source both under this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the director is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the director pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:

1. Violates a permit condition not described in subsection C or G of this section.

2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.

3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.

4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a single act or series of related acts, constitutes the commission of a single offense.

N. The attorney general may enforce the provisions of this section.

O. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

4. Any good faith efforts to comply with the applicable requirements.

5. The economic impact of the penalty of the violator.

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other aggravating and mitigating factor as the court deems relevant.

P. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.

2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

Q. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the director within twenty-four hours after the source first learned of the violation.

2. The owner or operator of the source provided written notification to the director containing all of the following information within seventy-two hours following the verbal or facsimile notification:

(a) Confirmation of the violation for which verbal or facsimile notification was provided.

(b) Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved.

In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification

pursuant to the first sentence of this paragraph.

R. It shall be an affirmative defense to any prosecution under subsection B, H, I or K of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by a permitting authority, the defendant obtained and relied upon the written advice of a permitting authority that no permit was necessary. Failure of a permitting authority to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described above shall be deemed to be advice that no permit was necessary for purposes of this subsection.

S. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

T. Under this section, to prove a knowing violation the state must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

U. For purposes of this section, the term "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. The term emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the administrator or the director.

49-465. Air pollution emergency

A. If the director determines that air pollution in any area constitutes or may constitute an emergency risk to the health of those in the area or that national ambient air quality standards are likely to be exceeded, such determination shall be communicated to the governor. The governor may, by proclamation, declare that an emergency exists and may prohibit, restrict or condition the following:

1. Motor vehicle traffic.
2. The operation of retail, commercial, manufacturing, governmental, industrial, or similar activity.
3. Operation of incinerators.
4. The burning or other consumption of fuels.
5. The burning of any materials whatsoever.
6. Any and all other activity which contributes or may contribute to the emergency.

B. If the governor declares that an emergency exists pursuant to subsection A, the governor shall prohibit, restrict or condition the employment schedules for employees of this state and its political subdivisions, and on a voluntary basis only, may encourage private employers to develop similar work rules to restrict vehicle emissions during air quality emergencies. Any unscheduled leave that an employee of this state or its political subdivisions is required to take because of the prohibition, restriction or condition shall be leave with pay.

C. Orders of the governor shall be enforced by the department and the state and local police and air pollution enforcement personnel forces. Those authorized to enforce the orders may use reasonable force required in the enforcement of the orders, and may take reasonable steps required to assure compliance, including but not limited to the following:

1. Enter upon any property or establishment believed to be violating the order and, if a request does not produce compliance, cause compliance with such order.
2. Stopping, detouring, rerouting, and prohibiting vehicle traffic.
3. Disconnecting incinerator or other types of combustion facilities.

49-466. Precedence of actions

For the benefit of the people of the state, court actions and proceedings brought under this article shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-467. Preservation of rights

It is the purpose of this article to provide additional and cumulative remedies to prevent, abate and control air pollution in the state. Nothing contained in this article shall be construed to abridge or alter rights of action or

remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this article, or any act done by virtue thereof, be construed as estopping the state or any municipality, or owners of land from the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

ARTICLE 3. COUNTY AIR POLLUTION CONTROL

49-471. Definitions

In this article, unless the context otherwise requires:

1. "Advisory council" means any county air pollution control advisory council established pursuant to this article.

2. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, windborne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.

3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or causes damage to property, or unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, or obscures visibility, or which in any way degrades the quality of the ambient air below the standards established by the board of supervisors.

4. "Board of supervisors" means any county board of supervisors.

5. "Control officer" means the executive head of the department authorized or designated to enforce air pollution regulations, or the executive head of an air pollution control district established pursuant to section 49-473.

6. "Hearing board" means any county air pollution hearing board established pursuant to this article.

7. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

8. "Special inspection warrant" is an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the control officer or his deputies, authorizing him to enter into or upon public or private property for the purpose of making an inspection authorized by law.

49-472. Department studies

Upon the request of any county by its board of supervisors, the department shall conduct such studies as are requested, and at the expense of such county, but limited to the county making the request. Such studies shall be made to determine the nature, extent, distribution and sources of air pollution within such county and the possible methods of control and abatement of such pollution within the county making the request. In the conduct of such requested studies the department may seek cooperative arrangements with state universities and other educational institutions of the state, or with other state departments, the county, municipalities or private agencies of any kind which have available facilities or personnel, or both, suitable for the conduct of one or more areas of such research, under the supervision of the department.

49-473. Board of supervisors

A. The board of supervisors of a county, in order to conserve and promote the public health, safety, and general welfare, shall within its territorial limits, or any portion thereof, investigate the degree to which the atmosphere of the county is contaminated by air pollution and the causes, sources, and extent of such air pollution or, if the state is developing a study in the county pursuant to section 49-424, cooperate with and assist the state in such a study.

B. The board of supervisors of a county shall authorize or designate an existing department of the county government or establish an air pollution control district to carry out the necessary investigations, inspections, and enforcement of any rules and regulations adopted pursuant to this article.

C. The board of supervisors of a county may in lieu of the provisions of subsection B, in addition to the joint exercise of powers provided for in title 11, chapter 7, article 3, establish a multi-county air quality control region with one or more other counties by agreement with the board of supervisors of such other county or counties, and contract for the joint administration of this article within such region, including, but not limited to, the joint adoption of regulations and standards and the enforcement thereof by a joint region hearing board. Any region created under this subsection shall be governed by all of the provisions applicable to a county.

49-474. County control boards

The board of supervisors of each county may authorize the board of health or health department of their respective counties in cooperation with the department of environmental quality to:

1. Study the problem of air pollution in the county.
2. Study possible effects on adjoining counties.
3. Cooperate with chambers of commerce, industry, agriculture, public officials and all other interested persons or organizations.
4. Hold public hearings if in their discretion such action is necessary.
5. The board of supervisors by resolution may establish an air pollution control district.

49-474.01. Additional board duties in nonattainment areas

A. The board of supervisors of a county which contains a vehicle emissions control area as defined in section 49-541 shall:

1. In area A, as defined in section 49-541, in consultation with the designated metropolitan planning organization, synchronize traffic control signals on all roadways, within and across jurisdictional boundaries, which have a traffic flow exceeding fifteen thousand motor vehicles per day. The synchronization shall be completed not later than September 30, 1994.

2. In area B, synchronize traffic control signals on roadways with a traffic flow exceeding fifteen thousand motor vehicles per day.

3. Implement adjusted work hours for at least eighty-five per cent of county employees each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

B. Not later than May 31, 1994 the board of supervisors of a county in area A as defined in section 49-541 shall make and enforce ordinances consistent with the provisions of section 49-588 to reduce or encourage the reduction of the commuter use of motor vehicles by employees of the county and employees whose place of employment is within the county.

C. The board of supervisors in a county with a population of more than one million two hundred thousand persons according to the most recent federal decennial census shall develop and implement a vehicle fleet plan for the purpose of encouraging and progressively increasing the use of alternative fuels in county owned vehicles. The plan shall include a timetable for increasing the use of alternative fuels in fleet vehicles either through purchase or conversion. The timetable shall reflect the following schedule and percentage of vehicles which operate on alternative fuels:

1. At least eighteen per cent of the total fleet by December 31, 1994.
2. At least twenty-five per cent of the total fleet by December 31, 1996.
3. At least fifty per cent of the total fleet by December 31, 1998.
4. At least seventy-five per cent of the total fleet by December 31, 2000 and each year thereafter.

D. The requirements of subsection C of this section may be waived on receipt of certification supported by evidence acceptable to the department that the county is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using alternative fuels at a projected cost that is reasonably expected to result in net costs of no greater than ten per cent more than the net costs associated with the continued use of conventional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied.

E. For the purpose of this section "alternative fuel" means fuel types and power sources as defined pursuant to section 41-803.

49-475. Powers and duties

The air pollution control district established by the board of supervisors shall have the power to:

1. Have perpetual succession.
2. Sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. Adopt a seal and alter it at its pleasure.
4. Take by grant, purchase, gift, or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.
5. Lease, sell or dispose of any property or any interest therein whenever in the judgment of the air pollution control board such property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the

district, and to pay any compensation received therefor into the general fund of the district.

49-476. Authorization to accept funds or grants

The department of environmental quality, county health departments, or boards of supervisors may accept and expend in accordance with the terms of the grant any funds granted to it for research of air pollution by the federal government, any political subdivision of the state, any agency or branch of the federal or state governments, or any private agency.

49-476.01. Monitoring

A. The control officer may require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the control officer either:

1. Determines that monitoring, sampling or other studies are necessary to determine the effects of the facility on levels of air pollution.

2. Has reasonable cause to believe a violation of this article, rules adopted pursuant to this article or a permit issued pursuant to this article has been committed.

3. Determines that those studies or data are necessary to accomplish the purposes of this article, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.

B. The board of supervisors shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions or air pollution which may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424 or section 49-425, subsection A. In the development of the rules, the board shall consider the cost and effectiveness of the monitoring, sampling or other studies.

C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the control officer may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the control officer shall consider the relative cost and accuracy of any alternatives which may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The control officer may require such monitoring, sampling or other quantification by permit or order if the control officer determines in writing that all of the following conditions are met:

1. The actual or potential emissions of air pollution may adversely affect public health or the environment.

2. An adequate scientific basis for the monitoring, sampling or quantification method exists.

3. The monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.

4. The monitoring, sampling or quantification method is reasonably accurate.

5. The cost of the method is reasonable in light of the use to be made of the data.

D. Orders issued or permit conditions imposed pursuant to this section shall be appealable to the hearing board in the same manner as that prescribed for orders of abatement in sections 49-489 and 49-490 and for permit conditions in section 49-482.

49-477. Advisory council

The board of supervisors may appoint an advisory council of such membership as it deems necessary to advise and consult with the board of supervisors, the control agency, and the control officer in effecting the purposes of this article.

49-478. Hearing board

A. The board of supervisors shall appoint an air pollution hearing board.

B. The hearing board shall consist of five members. The five members shall be knowledgeable in the field of air pollution. At least one member of the board shall be an attorney licensed to practice law in this state. At least three members shall not have a substantial interest, as defined in section 38-502, in any person required to obtain a permit pursuant to this article. Each board member shall serve for a term of three years.

C. The hearing board shall select a chairman and vice-chairman and such other officers as it deems necessary.

D. The board of supervisors may authorize compensation for hearing board members, and may authorize reimbursement for subsistence and travel, including travel from and to their respective places of residence when on official business.

49-479. Rules; hearing

A. The board of supervisors shall adopt such rules as it determines are necessary and feasible to control the release into the atmosphere of air contaminants originating within the territorial limits of the county or multi-county air quality control region in order to control air pollution, which rules, except as provided in subsection C shall contain standards at least equal to or more restrictive than those adopted by the director. In fixing such standards, the board or region shall give consideration but shall not be limited to:

1. The latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.

2. Atmosphere conditions and the types of air pollution agent or agents which, when present in the atmosphere, may interact with another agent or agents to produce an adverse effect on public health and welfare.

3. Securing, to the greatest degree practicable, the enjoyment of the natural attractions of the state and the comfort and convenience of the inhabitants.

B. No rule may be enacted or amended except after the board of supervisors first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. A county may adopt or amend a rule, emission standard, or standard of performance that is as stringent or more stringent than a rule, emission standard or standard of performance for similar sources adopted by the director only if the county complies with the applicable provisions of section 49-112.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

49-480. Permits; fees

A. The board of supervisors may adopt a program for the review, issuance, revision, administration and enforcement of permits and for public review of proposed permits for sources subject to section 49-426, subsection A that are not under the jurisdiction of the state pursuant to section 49-402 and that are not otherwise exempt pursuant to section 49-426, subsection B. This program shall include provisions for administration, inspection and enforcement of general permits issued pursuant to section 49-426, subsection H.

B. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and required to be obtained pursuant to title V of the clean air act including sources that emit hazardous air pollutants shall be identical to procedures for the review, issuance, revision and administration of permits issued by the department under this chapter. Such procedures shall comply with the requirements of sections 165, 173, 408 and titles III and V of the clean air act and implementing regulations for sources subject to titles III and V of the clean air act. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and not required to be obtained pursuant to title V of the clean air act shall be consistent with and equivalent to procedures for the review, issuance, revision and administration of permits issued by the department under this chapter.

C. Upon adoption of a permit program by the board of supervisors pursuant to this section, no person may commence construction, operate or make a modification to any source subject to the permit program without complying with the requirements of that program.

D. Permits issued pursuant to a program adopted under this section are subject to payment of a reasonable fee to be determined as follows:

1. For any source required to obtain a permit under title V of the clean air act, the board of supervisors shall establish by rule a system of fees consistent with and equivalent to that prescribed under section 502 of the clean air act. Such system shall prescribe procedures for increasing the fee each year by the percentage, if any by which the consumer price index for the most recent calendar year ending before the beginning of such year exceeds the consumer price index for the calendar year 1989.

2. For any facility subject to the permitting requirements of this chapter but not required to obtain a permit

under title V of the clean air act, the board of supervisors shall determine a permit fee based on all reasonable direct and indirect costs required to administer the permit, but not exceeding twenty-five thousand dollars. The board of supervisors shall establish an annual inspection fee, not to exceed the average cost of services.

E. Funds received for permits issued pursuant to this section shall be deposited in a special public health fund and shall be used by the control officer to defray the costs of implementing this article.

F. Permits issued pursuant to this section shall contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.
2. Enforceable emission limitations and standards.
3. A schedule for compliance, if applicable.
4. The requirement to submit at least every six months the results of any required monitoring.
5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

G. The control officer may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

H. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major source, the control officer shall require revisions to the permit to incorporate applicable standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The control officer shall require any revisions as expeditiously as practicable but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of the standards and regulations is after the expiration of the permit. Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

I. Except as provided in section 49-808, subsection E, section 49-426, subsection B and subsection A of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel shall first obtain a permit from the control officer. Any permit issued by the control officer under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.
2. The frequency and types of fuel testing to be conducted by the person.
3. The frequency and type of emissions testing or monitoring to be conducted by the person.
4. Requirements for record keeping and reporting.
5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning used oil, used oil fuel, hazardous waste or hazardous waste fuel.

49-480.01. Permits; changes within a source; revisions

A. The board of supervisors shall establish by rule provisions to allow changes within a permitted source without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.
2. The changes do not result in an emission that is greater than the emissions allowed under the permit.
3. The source provides the control officer with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.
4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section. Rules adopted pursuant to this section may prescribe a different time limit for notifications associated with emergency conditions.

B. Any permit issued pursuant to section 49-480 may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or a termination, or a notification filed pursuant to subsection A does not stay any effective permit condition. The control officer may require in writing that the applicant provide within a reasonable time any information that the control officer identifies as necessary for the control officer to determine if cause exists for revising, revoking and reissuing, or terminating, the permit, or to determine compliance with permit conditions.

49-480.02. Appeals of permit actions

A. Within thirty days after the control officer gives notice of approval, denial or revocation of a permit, the applicant or any person who submitted comments pursuant to section 49-480, may request an appeal as provided

under section 49-482. The decision after that hearing constitutes the final permit action from which judicial review may be taken pursuant to title 12, chapter 7, article 6.

B. Any person who has an interest that is or may be adversely affected may commence a civil action in superior court against the control officer alleging that the control officer has failed to act in a timely manner consistent with the requirements of section 49-480. No action may be commenced before sixty days after the plaintiff has given notice to the control officer of the plaintiff's intent to file. The court has jurisdiction to require the control officer to act without additional delay.

49-480.03. Federal hazardous air pollutant program; definitions

A. By November 1, 1993, the board of supervisors shall adopt by rule a program for administration and enforcement of the federal hazardous air pollutant program established by section 112 of the clean air act. The program shall be consistent with and meet the requirements of section 112 of the clean air act and shall contain the following provisions:

1. No person may obtain a permit or permit revision to modify a major source of federally listed hazardous air pollutants or to construct a new major source of federally listed hazardous air pollutants, unless the control officer determines that the person will install the maximum achievable control technology for the modification or new major source. For purposes of this paragraph, a major source of federally listed hazardous air pollutants means a major source as defined in section 112(a)(1) of the clean air act and implementing regulations adopted by the administrator. A new or modified major source of federally listed hazardous air pollutants means a major source that commences construction or a modification after rules adopted by the board of supervisors pursuant to this subsection become effective. A physical change to a source or change in the method of operation of a source is not a modification subject to this paragraph or paragraph 2 of this subsection if the change complies with section 112(g)(1) of the clean air act.

2. Until the administrator adopts emissions standards establishing the maximum achievable control technology for a source category or subcategory that includes a source subject to paragraph 1 of this subsection, the control officer shall determine the maximum achievable control technology for the modification or the new major source on a case-by-case basis. If on the basis of this case-by-case determination of the maximum achievable control technology the control officer determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

3. If an existing source submits an application pursuant to section 49-480 which demonstrates that the source has achieved a reduction of ninety per cent or more of federally listed hazardous air pollutants or ninety-five per cent in the case of federally listed hazardous air pollutants that are particulates, the control officer shall issue a permit or permit revision allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated by the administrator under section 112(d) of the clean air act. The application shall comply with section 112(i)(5) of the clean air act and implementing regulations adopted by the administrator. The alternative emission limitation shall apply for a period of six years from the compliance date otherwise applicable to the source under section 112(d) of the clean air act.

4. If the administrator fails to adopt a standard for a source category or subcategory within eighteen months after the deadline established for that category or subcategory pursuant to section 112(e)(1) and (3) of the clean air act, the owner or operator of an existing major source in the category or subcategory shall be required to submit a permit application for such source pursuant to section 49-480, and the control officer, acting in accordance with the procedures adopted pursuant to section 49-480, shall be required to issue a permit establishing maximum achievable control technology for the affected source on a case-by-case basis or, in the alternative, an alternative emission limitation pursuant to paragraph 3 of this subsection. If the control officer determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

5. When the administrator adopts and makes effective standards pursuant to section 112(d) or 112(f) of the clean air act the board of supervisors shall adopt those standards in the same manner as prescribed by the administrator.

6. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the control officer shall not require compliance with a numeric emission limit for that pollutant but shall instead require compliance with a design, equipment, work practice or operational standard, or a combination of those standards. The provision adopted pursuant to this paragraph shall not apply to sources or modifications that

commence construction after the permit program established pursuant to section 49-426 becomes effective under section 502(h) of the clean air act.

B. Where the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall apply to the regulation of those source categories under subsection A of this section.

C. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the control officer shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

D. When the administrator makes one of the following findings pursuant to section 112(n)(1)(A) of the clean air act the finding is effective for purposes of the county's administration and enforcement of the federal hazardous air pollutant program in the same manner as prescribed by the administrator:

1. A finding that regulation is not appropriate or necessary.
2. A finding that alternative control strategies should be applied.

49-480.04. County program for control of hazardous air pollutants

A. By November 1, 1993, the board of supervisors shall by rule establish a county program for the control of hazardous air pollutants meeting the requirements of this section. The program established pursuant to this section shall apply to the following sources:

1. Sources that emit or have the potential to emit with controls, ten tons per year or more of any hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants.

2. Sources that are within a category designated pursuant to section 49-426.05 and that emit or have the potential to emit, with controls, one ton per year or more of any hazardous air pollutant or two and one-half tons per year of any combination of hazardous air pollutants.

B. After the effective date of the rules adopted pursuant to subsection A of this section, a person shall not commence the construction or modification of a source that is subject to this section without first obtaining a permit or permit revision meeting the requirements of section 49-480 and subsection C or D of this section. A physical change to a source or change in the method of operation of a source is not a modification subject to this section if the change satisfies any of the following conditions:

1. The change complies with section 112(g)(1) of the clean air act.

2. The change, together with any other changes implemented or planned by the source, qualifies the source for an alternative emission limitation pursuant to section 112(i)(5) of the clean air act.

3. The change is required under a standard imposed pursuant to section 112(d) or 112(f) of the clean air act and the change is implemented after the administrator promulgates the standard.

C. A permit issued to a new or modified source that is subject to the county hazardous air pollutant program under subsection A, paragraph 1 of this section shall impose the maximum achievable control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of maximum achievable control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. A permit or permit revision issued to a new or modified source that is subject to the county hazardous air pollutant program under subsection A, paragraph 2 of this section shall impose hazardous air pollutant reasonably available control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the control officer shall not require compliance with a numeric emission limit for the pollutant but shall instead require compliance with a design, equipment, work practice or operational standard, or a combination thereof. Standards imposed pursuant to this subsection shall apply only to hazardous air pollutants emitted in amounts exceeding the de minimis amounts established by the administrator or by the director pursuant to section 49-426.06, subsection B. The control officer shall not impose a standard under this subsection that would require the application of measures that are incompatible with measures required under a standard imposed pursuant to section 49-480.03, subsection A.

D. If the owner or operator of a new source or modification subject to this section establishes that the imposition of maximum achievable control technology or hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects by conducting a scientifically sound risk management analysis and submitting the results to the control officer with the permit

application for the new source or modification, the control officer shall exempt the source from the imposition of such technology. The risk management analysis may take into account the following factors:

1. The estimated actual exposure of persons living in the vicinity of the source.
2. Available epidemiological or other health studies.
3. Risks presented by background concentrations of hazardous air pollutants.
4. Uncertainties in risk assessment methodology or other health assessment techniques.
5. Negative health or environmental consequences that would result from efforts to reduce the risk.
6. The technological and commercial availability of control methods beyond those otherwise required for the source and the cost of such methods.

E. If maximum achievable control technology or hazardous air pollutant reasonably available control technology standard has been established in a general permit for a defined class of sources pursuant to subsection C of this section and sections 49-480 and 49-426, subsection H, the owner or operator of a source within that class may obtain a variance from the standard by complying with subsection D of this section at the time the source applies to be permitted under the general permit. If the owner or operator makes the demonstration required by subsection D of this section and otherwise qualifies for the general permit, the control officer shall, in accordance with the procedures established pursuant to sections 49-480 and 49-426, approve the application and issue a permit granting a variance from the specific provisions of the general permit relating to the standard. Except as otherwise modified by the variance, the general permit shall govern the source.

F. If the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall apply to the regulation of those source categories under subsection B of this section.

G. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the control officer shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

H. Except as otherwise provided in subsection I of this section, the program established pursuant to this section shall apply only to source categories designated by the director pursuant to section 49-426.05, subsection A and to hazardous air pollutants designated by the director pursuant to section 49-426.03, subsection A and section 49-426.04.

I. When a new source that is within a category that has not been designated pursuant to section 49-426.05, subsection A submits an application for a permit pursuant to section 49-480, the control officer may suspend action on the application pending the designation of the category by the director pursuant to section 49-426.05, subsection A, if all of the following conditions are satisfied:

1. The director makes the finding required by section 49-426.05, subsection A for the category to which the source belongs.
2. The control officer provides notice of the director's finding and the control officer's intent to suspend action on the application to the applicant on or before the date that a completeness determination is due under section 49-480 and section 49-426.
3. The applicant does not elect to comply with subsection C or D of this section.

49-481. Grant or denial of applications

A. The control officer shall deny a permit or revision if the applicant does not show that every such source is so designed, controlled, or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of the provisions of this article and the rules adopted by the board of supervisors.

B. Prior to acting on an application for a permit, the control officer may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the source described in the application. In the event of such a requirement, the control officer shall notify the applicant in writing of the type and characteristics of such facilities.

C. In acting upon an application for a permit renewal, if the control officer finds that such source has been constructed not in accordance with any prior permit or revision issued pursuant to section 49-480.01, he shall require the person to obtain a permit revision or deny the application for such permit. The control officer shall not accept any further application for a permit for such source so constructed until he finds that such source has been reconstructed in accordance with the prior permit or a revision, or a revision to the permit has been obtained.

D. After a decision on a permit or revision, the control officer shall notify the applicant and any person who filed a comment on the permit pursuant to section 49-480 or the revision pursuant to section 49-480.01 in writing of the decision, and if the permit is denied, the reasons for such denial. Service of this notification may be made in person or by first class mail. The control officer shall not accept a further application unless the applicant has corrected the reasons for the objections specified by the control officer as reasons for such denial.

49-482. Appeals to hearing board

A. Within thirty days after notice is given by the control officer of approval or denial of a permit, permit revision or conditional order, the applicant and any person who filed a comment on the permit or permit revision pursuant to section 49-480, subsection B and section 49-426, subsection D, or on the conditional order pursuant to section 49-492, subsection C, may petition the hearing board, in writing, for a public hearing, which shall be held within thirty days after receipt of the petition. The hearing board, after notice and a public hearing, may sustain, modify or reverse the action of the control officer.

B. Any person having an interest that is or may be adversely affected may commence a civil action in superior court against the control officer alleging that the control officer has failed to act in a timely manner as provided in section 49-480, subsection B and section 49-426, subsection C. No action may be commenced before sixty days after the plaintiff has given notice to the control officer. The court has jurisdiction to require the control officer to act without additional delay.

49-483. Permit transfers; notice; appeal

A. A permit shall not be transferable, whether by operation of law or otherwise, either from one location to another, or from one piece of equipment to another.

B. The provisions of subsection A shall not apply to mobile or portable machinery or equipment which is transferred from one location to another after notification to the control officer of the transfer.

C. A permit may be transferred, whether by operation of law or otherwise, from one person to another, provided that prior to the transfer, the person holding the permit notifies the control officer in writing of the name, address, telephone number and statutory agent of the person to whom the permit will be transferred, the effective date of the proposed transfer and other information the board of supervisors may determine to be necessary by rule. The control officer shall prescribe procedures for such notification.

D. If the control officer determines that the transferee is not capable of operating the source in compliance with the requirements of this article, rules adopted under this article and the conditions established in the permit, the transfer shall be denied. In order for the denial to be effective, notice of the control officer's denial, including the reasons for the denial, shall be issued within ten working days of the control officer's receipt of the notice of the proposed transfer.

E. Denial of a permit transfer is appealable by the transferor and the transferee to the air pollution hearing board in the same manner as prescribed for denial of a permit in section 49-482.

49-484. Expiration of permit

An installation permit shall expire two years from the date of its issuance.

49-485. Posting of permit

A person who has been granted an operating permit, shall firmly affix such permit, an approved facsimile of such permit, or other approved identification bearing the permit number upon such machine, equipment, incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine, equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises.

49-486. Notice by building permit agencies

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant for a building permit to determine if an installation permit will possibly be required under the provisions of section 49-480. If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the control officer or the department of environmental quality and shall furnish a copy of

such notice to the control officer and the department.

49-487. Classification and reporting; confidentiality of records

A. The board of supervisors by rules which are equal to or more restrictive than those adopted by the director of environmental quality shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, the nature and duration of emissions and such other information as is relevant to air pollution and deemed necessary by the board.

B. The owner, lessee, or operator of a potential air contaminant source shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable and required to determine compliance in a manner acceptable to the control officer, and shall supply monitoring information as directed in writing by the control officer. Such devices shall be available for inspection by the control officer during all reasonable times.

C. Any records, reports or information obtained from any person under this chapter, including records, reports or information obtained or prepared by the control officer or a county employee, shall be available to the public, except that the information or any part of the information shall be considered confidential on either of the following:

1. A showing, satisfactory to the control officer, by any person that the information or a part of the information if made public would divulge the trade secrets of the person.

2. A determination by the county attorney that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this chapter in superior court.

D. Notwithstanding subsection C of this section, the following information shall be available to the public:

1. The name and address of any permit applicant or permittee.
2. The chemical constituents, concentrations and amounts of any emission of any air contaminant.
3. The existence or level of a concentration of an air pollutant in the environment.

49-488. Special inspection warrant

A. The control officer and his deputies charged under this chapter or the rules and regulations adopted pursuant to this chapter with powers or duties involving inspection of real or personal property including buildings, building premises and building contents for the purpose of air pollution control shall be authorized to present themselves before a magistrate and apply for, obtain and execute special inspection warrants. Such inspections shall be limited to property other than the interior of structures used as private residences.

B. Upon showing by the affidavit of the control officer or his deputies that consent to entry for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate for inspection of public or private, real or personal properties. Such warrants shall not be necessary in the case of an emergency where there is an imminent and substantial endangerment to the health of persons.

C. The warrant shall be in substantially the following form: "County of ++++++++++++++, state of Arizona to any control officer or deputy control officer in the county of ++++++++++++++ proof by affidavit having been this day made before me by (person or persons whose affidavit has been taken) that in and upon certain premises in the (city, town or county) of ++++++++++++++ and more particularly described as follows: (describe the premises with reasonable particularity) there now exists a reasonable governmental interest to determine if said premises comply with (section ++++++++++++++ of the Arizona Revised Statutes) and/or (section ++++++++++++++ of regulation or ordinance), you are therefore commanded in the day time (or during reasonable business hours), to make an inspection of said premises as soon as practicable. Date, signature and title of office." The endorsement on the warrant shall be in substantially the following form: "Received by me ++++++++++++++ 19++, at +++++ o'clock ++++ (name of control officer or deputy control officer)." The return of officer shall be in substantially the following form: "I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings). Dated this ++++++++++++++ day of ++++++++++++++ 19++++ (name of control officer or deputy control officer)."

D. The warrant may be served by the control officer or his deputies mentioned in its directions, but by no other person except in aid of the control officer or his deputies, on his requiring it, the control officer or his deputies being present and acting in its execution.

E. A warrant shall be executed and returned to the magistrate who issued it within ten days after its date.

After the expiration of that time, the warrant shall unless executed be void.

F. Any person who knowingly refuses to permit an inspection lawfully authorized by warrant issued pursuant to this article is guilty of a petty offense.

49-490. Hearings on orders of abatement

A. An order of abatement issued by the control officer shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to section 49-511 unless the person or persons named in such order shall have made a timely request for a hearing before the hearing board. If a hearing is requested, the hearing board shall hold the hearing within thirty days from receipt of the request unless such time is extended by the hearing board. Written notice of the time and place of the hearing shall be sent by the hearing board to the person or persons requesting the hearing and to the control officer at least fifteen days before the hearing.

B. If the board, after the hearing, determines that the act or acts set forth in the order constitute a violation of any provision of this article or of the rules adopted pursuant to this article or any requirement of a permit or conditional order issued pursuant to this article and that no conditional order is justified, the board shall affirm or modify the order for abatement. The order may be conditional and require a person to refrain from the particular act or acts unless certain conditions are met.

49-491. Conditional orders; standards; rules

A. The director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of this article, any rule adopted pursuant to this article, or any requirement of a permit issued pursuant to this article if the control officer makes each of the following findings:

1. Issuance of the conditional order will not endanger public health or the environment, or impede attainment of the national ambient air quality standards.

2. Either of the following is true:

(a) There has been a breakdown of equipment or upset of operations beyond the control of the petitioner; the source was in compliance before the breakdown or upset; and the breakdown or upset may be corrected within a reasonable time.

(b) There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.

B. The board of supervisors shall adopt rules necessary for the issuance of conditional orders. Such rules shall specify the minimum requirements for petitions, and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of the state implementation plan, the rules adopted by the board of supervisors shall provide for a public hearing to receive comments on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this article, the rules adopted by the board of supervisors shall conform to the procedures established for permit revisions pursuant to section 49-480.01.

49-492. Petition for conditional order; publication; public hearing

A. A person who seeks a conditional order shall file a petition with the control officer.

B. If the issuance of the conditional order requires a public hearing, the control officer shall set a hearing date within thirty days after the filing of the petition. The hearing date shall be within sixty days after the filing of the petition.

C. Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in section 49-498. The notice shall state that any person may submit comments on the petition. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the petition should or should not be granted. Grounds for comment shall be limited to whether the petition meets the criteria for issuance of a conditional order prescribed in section 49-491.

49-493. Decisions on petitions for conditional order; terms and conditions

A. Within thirty days after the conclusion of the hearing held pursuant to section 49-492, subsection B, or, if no hearing is held, within sixty days after the filing of the petition, the control officer shall deny the petition or grant the petition on such terms and conditions as the director deems appropriate.

B. The terms and conditions which are imposed as a condition to the granting or the continued existence

of a conditional order shall include but not be limited to:

1. A detailed plan for completion of corrective steps needed to conform to the provisions of this article, the rules adopted pursuant to this article, and the requirements of the permit issued pursuant to this article.

2. A requirement that necessary construction shall begin as expeditiously as practicable.

3. Such written reports as may be required.

4. The right to make periodic inspection of the facilities for which the conditional order is granted.

C. A reasonable fee as may be prescribed by the control officer shall be deposited in the special public health fund.

49-494. Term of conditional order; effective date

A. A conditional order issued by the control officer shall be valid for such period as the control officer prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this article and title V of the clean air act, and three years in the case of any other source that is required to obtain a permit pursuant to this article.

B. Except as otherwise provided in paragraphs 1 and 2 of this subsection, a conditional order issued by the control officer shall be effective when issued.

1. If the conditional order varies from the requirements of the state implementation plan, the conditional order shall be submitted to the administrator as a revision to the state implementation plan pursuant to section 110(L) of the clean air act, and shall become effective upon approval by the administrator.

2. If the conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to title V of the clean air act, the conditional order shall be submitted to the administrator if required by section 505 of the clean air act, and in such case shall be effective at the end of the review period specified in such section, unless objected to within such period by the administrator.

49-495. Suspension and revocation of conditional order

If the terms and conditions of the conditional order are being violated, the control officer may seek to revoke or suspend the conditional order granted. In such event, the control officer shall serve notice of such violation on the holder of the conditional order in the manner provided in section 49-498. The notice shall specify the nature of such violation and the date on which a hearing will be held by the hearing board to determine if such a violation has occurred and whether the conditional order should be suspended or revoked. The date of said hearing shall be within thirty days from the date said notice is served upon the holder of the conditional order.

49-496. Decisions of hearing board; subpoenas; effective date

A. All decisions of the hearing board, including the majority of opinion and all concurring and dissenting opinions, shall be in writing and shall be of public record.

B. A majority of the total membership of the hearing board shall concur in a decision for it to have effect.

C. The chairman or, in his absence, the vice chairman may issue subpoenas to compel attendance of any person at a hearing and require the production of books, records and other documents material to a hearing. Obedience to subpoenas may be enforced pursuant to section 12-2212.

D. Subject to the approval of the board of supervisors, the hearing board may adopt a manual of procedures governing its operation.

E. Decisions of the hearing board shall become effective not less than thirty days after they are issued unless:

1. A rehearing is granted which shall have the effect of staying the decision.

2. It is determined that an emergency exists which justifies an earlier effective date.

F. The hearing board may revoke or modify an order of abatement or a permit or permit revision only after first holding a hearing within thirty days from the giving of notice of such hearing as provided in section 49-498.

49-497. Judicial review; grounds; procedures

A. Judicial review of hearing board decisions shall be pursuant to the provisions of title 12, chapter 7, article 6, except as provided in this section.

B. Within thirty days after service of notice of a final decision or order of the board, or an order denying a rehearing timely applied for, any person who was a party of record in the proceedings before the board, including

the control officer or department authorized or designated to enforce air pollution regulations, may appeal therefrom to the superior court in the county in which the hearing was conducted and the scope of such review shall be determined pursuant to section 12-910. C. A notice of appeal, designating the grounds therefore, and a demand in writing for a certified transcript of the testimony and exhibits shall be filed with the court and served on the board. After receipt of the demand, accompanied by payment of a fee of the current prevailing rate for transcript, and one dollar for certification thereof, the board shall make and certify the transcript and file it with the clerk of the court to which the appeal has been taken within thirty days, unless extended by agreement of the parties or order of the court.

D. When an appeal is taken from an order or decision of the board, such order or decision shall remain in effect pending final determination of the matter, unless stayed by the court, on a hearing after notice to the board and upon a finding by the court that there is probable cause for appeal and that great or irreparable damage may result to the petitioner warranting such stay.

E. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-498. Notice of hearing; publication; service

A. Any notice of hearing required by this article shall be given by publication of a notice of hearing for at least two times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county, and by posting copies of the petition and notice in at least three conspicuous places in the county.

B. If the hearing involves any violation of rules or regulations adopted pursuant to this article or a conditional order therefrom then, in addition to the requirements of subsection A, the person allegedly committing or having committed the violation or requesting the conditional order, shall be served personally or by registered or certified mail at least fifteen days prior to the hearing with a written notice of hearing.

49-501. Unlawful open burning; exceptions; violation; classification

A. Notwithstanding the provisions of any other section of this article, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.

B. "Open outdoor fire", as used in this section, means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. "Flue", as used in this section, means any duct or passage for air, gases or the like, such as a stack or chimney.

C. The following fires are excepted from the provisions of this section:

1. Fires used only for cooking of food or for providing warmth for human beings or for recreational purposes or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.

2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.

3. Fires set by or permitted by the director of the department of agriculture or county agricultural agents of the county for the purpose of disease and pest prevention.

4. Fires set by or permitted by the federal government or any of its departments, agencies or agents, the state or any of its agencies, departments or political subdivisions, for the purpose of watershed rehabilitation or control through vegetative manipulation.

5. Fires permitted by any rule or regulation issued pursuant to this article, by any conditional permit issued by a hearing board established under this article or by any rule or conditional permit issued pursuant to article 2 of this chapter when the department of environmental quality pursuant to section 49-402 has assumed jurisdiction of the county in which the fire is located.

6. Fires set for the disposal of dangerous materials where there is no safe alternate method of disposal.

D. Permission for the setting of any fire given by a public officer in the performance of official duty under subsection C, paragraph 2, 3 or 4 shall be given in writing and a copy of such written permission shall be transmitted immediately to the director of environmental quality and the control officer of the county, district or region in which such fire is allowed. The setting of any such fire shall be conducted in a manner and at such time as approved by

the control officer or the director of environmental quality, unless doing so would defeat the purpose of the exemption.

E. The director may issue a general permit to allow persons engaged in farming or ranching on forty acres or more in an unincorporated area to burn household waste, as defined in section 49-701, that is generated on-site, if no household waste collection and disposal service is available. The general permit shall include the following:

1. Conditions governing the method, manner and times for burning.

2. Limitation on materials which may be burned, including a prohibition on burning of materials which generate noxious fumes.

3. A requirement that any person seeking coverage under the general permit shall register with the director on a form prescribed by the director. The director shall upon receipt of a registration form, notify the county in which the farm or ranch is located of such registration.

4. A statement that the director, a local air pollution control officer, or other public officer may order the extinguishment of burning or may prohibit burning during periods of inadequate smoke dispersion, excessive visibility impairment or at other times when public health or safety could be adversely affected.

F. Nothing in this section is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation.

G. A person who violates any provision of this section may be served a notice of violation and be subject to the enforcement provisions of this article to the same extent as a person violating any rule or regulation adopted pursuant to this article.

H. Any violation of this section shall be a petty offense.

49-502. Violation; classification

A. Any person who violates any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article is guilty of a class 1 misdemeanor for each day the violation continues unless another classification is specifically prescribed in this article. Each day of violation shall constitute a separate offense. Peace officers and the control officer and his deputies shall have the authority to issue a notice to appear under the same conditions and procedures set forth in section 13-3903 for a violation of any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article.

B. Any person who violates any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article is subject to a civil penalty of not more than ten thousand dollars per day per violation. The county attorney, at the request of the control officer, may commence an action in superior court to recover civil penalties provided by this section. Penalties recovered pursuant to this section shall be deposited in the special public health fund prescribed in section 49-480.

C. In determining the amount of a fine or civil penalty under this section, the court shall consider:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of such violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. Such other factors as the court deems relevant.

49-503. Defenses

Violations under section 49-502 shall be malum prohibitum. Lack of criminal intent shall not constitute a defense to such violations.

49-504. Limitations

Nothing in this article shall be construed so as to:

1. Grant any jurisdiction or authority with respect to air contamination or pollution existing solely within commercial and industrial plants, works, or shops owned by or under control of the person causing the air contamination or pollution.

2. Alter or in any other way affect the relations between employers and employees with respect to or concerning any condition of air contamination or pollution.

3. Require the readoption of any rule or regulation previously adopted prior to the effective date of this

article, provided such rule or regulation is in conformity with the provisions of this article.

4. Prevent the normal farm cultural practices which cause dust.

49-506. Voluntary no-drive days

A county with a population of four hundred thousand or more persons shall implement a voluntary program to encourage all drivers within such a county to not drive their motor vehicles during certain prescribed days during the months of October through March 31 of each year.

49-507. Technical assistance to small businesses

Not later than August 15, 1993, after reasonable notice and a public hearing, the control officer shall submit to the director a plan that establishes a small business stationary source technical and compliance assistance program consistent with and equivalent to that required under section 507 of the clean air act.

49-510. Violations; production of records

When the control officer has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may request, in writing, that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules adopted pursuant to this article.

49-511. Violations; order of abatement

When the control officer has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may serve upon such person by certified mail or in person an order of abatement or may file a complaint in superior court alleging a violation pursuant to section 49-513. The order shall state with particularity the act constituting the violation, shall state in its entirety the certain requirement, provision or rule violated, shall state the duration of the order and shall state that the alleged violator is entitled to a hearing, if such hearing is requested in writing within thirty days after the date of issuance of the order. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. An order issued under this section shall require the persons to whom it is issued to comply with the requirement, provision or rule as expeditiously as practicable. In the case of a source required to obtain a permit pursuant to this article and title V of the clean air act, the order shall require compliance no later than one year after the date the order was issued, and shall be nonrenewable.

49-512. Violations; injunctive relief

The county attorney, at the request of the control officer, shall file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, if the control officer has reasonable cause to believe that any of the following is occurring:

1. A person has violated or is in violation of any provision of this article, a rule adopted pursuant to this article or a permit issued pursuant to this article.

2. A person has violated or is in violation of an effective order of abatement.

3. A person is creating an imminent and substantial endangerment to the public health or the environment because of a release of a harmful air contaminant, unless that release is subject to enforcement under title 3, chapter 2, article 6.

49-513. Violations; civil penalties

A. A person who violates any provision of this article, any permit or permit condition issued pursuant to this article, any fee or filing requirement, any rule adopted pursuant to this article, an effective order of abatement issued pursuant to this article or any duty to allow or carry out inspection, entry or monitoring activities, is subject to a civil penalty of not more than ten thousand dollars per day per violation. The county attorney at the request of the control officer shall file an action in superior court to recover penalties provided for in this section.

B. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, if the control officer has notified the source of the violation and makes a prima facie showing that

the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violations shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section is accomplished by the issuance of a notice of violation or order of abatement or by filing a complaint in superior court that alleges any violation described in subsection A of this section.

C. In determining the amount of a civil penalty under this section, the court shall consider all of the following:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of that violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.
7. Payment by the violator of penalties previously assessed for the same violation.
8. Other factors as the court deems relevant.

D. All penalties collected pursuant to this section shall be deposited in the special public health fund authorized in section 49-480.

49-514. Violation; classification; definition

From and after October 31, 1994:

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 U.S.C. section 11002(a)(2) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the administrator, director or control officer has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.
2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant. Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony. D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the control officer pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the control officer to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material pursuant to section 49-464, subsection G.

H. A person who is required to obtain a permit before commencing construction of a source both under

this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the control officer is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the control officer pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:

1. Violates a permit condition not described in subsection C or G of this section.

2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.

3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.

4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a single act or series of related acts, constitutes the commission of a single offense.

N. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

4. Any good faith efforts to comply with the applicable requirements.

5. The economic impact of the penalty of the violator.

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other aggravating and mitigating factor as the court deems relevant.

O. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.

2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

P. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the control officer within twenty-four hours after the source first learned of the violation.

2. The owner or operator of the source provided written notification to the control officer containing all of the following information within seventy-two hours following the verbal or facsimile notification:

(a) Confirmation of the violation for which verbal or facsimile notification was provided.

(b) Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved.

In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.

Q. It shall be an affirmative defense to any prosecution under subsection B, H, I or K of this section for

operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by a permitting authority, the defendant obtained and relied upon the written advice of a permitting authority that no permit was necessary. Failure of a permitting authority to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described above shall be deemed to be advice that no permit was necessary for purposes of this subsection.

R. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

S. Under this section, to prove a knowing violation the state must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

T. For purposes of this section, the term "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. The term emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the administrator or the director or control officer.

49-515. Precedence of actions

For the benefit of the people of the state, court actions and proceedings brought under this article shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-516. Preservation of rights

It is the purpose of this article to provide additional and cumulative remedies to prevent, abate, and control air pollution in the state. Nothing contained in this article shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this article, or any act done by virtue thereof, be construed as estopping the state or any municipality, or owners of land from the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

EXHIBIT 2

NSR AND SIP COMPLETENESS CHECKLIST

I. ADMINISTRATIVE MATERIALS

1. SUBMITTAL LETTER FROM GOVERNOR/DESIGNEE

Included.

2. EVIDENCE OF ADOPTION

See Attachment 4: certified rules, inclusive of Ordinance 1993-128 and Ordinance 1994-83 (Title 17 of the Pima County Code).

3. STATE LEGAL AUTHORITY FOR ADOPTION / IMPLEMENTATION

See Attachment 1: Arizona Revised Statutes Title 49 Chapter 3 Articles 1, 2, and 3.

4. COMPLETE COPY OF ACTUAL REGULATION

See Attachment 5: Those portions of Title 17 of the Pima County Code applicable to major source NSR/PSD;
See Attachment 6: Those portions of Title 17 of the Pima County Code applicable to minor source NSR.

5. EVIDENCE THAT ADMINISTRATIVE PROCEDURES ACT REQUIREMENTS WERE MET

See Attachment 7.

6. EVIDENCE OF PUBLIC HEARING

See Attachment 7.

7. PUBLIC COMMENTS AND AGENCY RESPONSES

See Attachment 7.

II. TECHNICAL MATERIAL

8. IDENTIFICATION OF POLLUTANTS REGULATED BY RULE

See Attachment 3 - Table 2 & Table 3, NSR Checklist.

9. IDENTIFICATION OF SOURCES/ATTAINMENT STATUS

See Attachment 3 - Table 1, NSR Checklist. There are no sources for which NSR/PSD permits have been issued since the late 1970's. One source was permitted for ozone NSR prior to the Tucson Air Planning Area's (TAPA) redesignation to attainment for ozone (after NAAQS standard for photochemical oxidants was rescinded and the new NAAQS for ozone was promulgated).

10. RULE CHANGES INDICATION BY UNDERLINING AND CROSS-OUTS

See Attachment 5: *Those portions of Title 17 of the Pima County Code applicable to major source NSR/PSD;*

See Attachment 6: *Those portions of Title 17 of the Pima County Code applicable to minor source NSR.*

11. RULES'S EFFECT ON EMISSIONS

Not applicable.

12. DEMONSTRATION THAT NAAQS, PSD INCREMENTS, AND RFP ARE PROTECTED

The intent of this NSR/PSD SIP submittal is to protect the criteria pollutants, federal PSD increment levels, and provide for RFP, in concert with any applicable nonattainment area plans and existing SIPs.

13. EVIDENCE THAT EMISSIONS LIMITATION ARE BASED ON CONTINUOUS EMISSIONS REDUCTION TECHNOLOGY

Not applicable.

14. MODELING SUPPORT

Not applicable.

15. IDENTIFICATION OF SECTIONS OF RULE CONTAINING EMISSION LIMITS, WORK PRACTICE STANDARDS, AND/OR RECORDKEEPING/REPORTING REQUIREMENTS

See Attachment 3, NSR checklist.

Emission Limits / Work Practice Standards: 17.08.150; 17.12.200; 17.16

Recordkeeping/Reporting: 17.12.180; 17.12.210; 17.24 Articles 2 & 3.

16. COMPLIANCE/ENFORCEMENT STRATEGIES

See Attachment 3, NSR Checklist.

Permit Contents: 17.12.180

Compliance: 17.12.210

17. ECONOMIC TECHNICAL JUSTIFICATION FOR DEVIATION FROM EPA POLICIES

None Known.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
SIP ENFORCEABILITY ANALYSIS FOR PIMA COUNTY RULES

NSR AND SIP ENFORCEABILITY CHECKLIST

1. **State and Legal Authority for Adoption/Implementation**

ARS, Title 49, Chapter 3, Articles 1, 2, and 3 (see Exhibit 1).

2. **Pollutants Regulated by Rule:**

PM: X , SOx: X , VOC: X , NOx: X , CO: X , Pb: X

3. **Identification of Sources:**

New and Modified Pima County Major and Minor Sources for purposes of NSR/PSD.

4. **Are any exemptions allowed? If so, what criteria are used? Specify calculation procedure.**

As per State statute: motor vehicles, agricultural vehicles or agricultural equipment normally used in farm operations, fuel burning equipment rated at less than five hundred BTU/hr. A.R.S. § 49-426.B

5. **Is bubbling or averaging of any type allowed? If yes, (a) state criteria; (b) is averaging time different from that of the ambient standard?**

No.

6. **What are the units of compliance?**

Tons per year (tpy). See Table 2 of NSR Checklist and rule sections: T17.04.340.A.131, T17.04.340.218. Also refer to R18-2-101.60, R18-2-101.97 and R18-2-401.9 in Arizona Administrative Code.

7. **If an area is redesignated, will this change the emission limitations? If yes, which ones and how?**

Yes, emission limitations and offsets are listed in Table 3 of the NSR Checklist (Attachment 3) and in rule sections:
Pima County General:
T17.16.570.A, T17.340.A.218

General: R18-2-404.C, R18-2-404.J, R18-2-404.K, R18-2-101-.69.

8.What is the compliance date?

Not Applicable.

9. What is the attainment date?

Not Applicable.

10. What test methods are required?

Not Applicable.

11. What is the averaging time in the compliance test method?

Not Applicable.

12. Is there a required compliance calculation or evaluation? What is the period of compliance and/or evaluation method?

Not Applicable.

13. Are records required to be kept?

Yes. See T17.12.180, 17.12.210, 17.24, Articles 1 & 2.

14. What records are required determine compliance?

See T17.12.210

15. In what form or units must the records be kept?
On what time basis (hourly, daily, etc.) must the records be kept?

See T17.12.210

16. Malfunction provisions (what exceedances may be excused, how applied, who makes determination):

Malfunction is defined in T17.04.340.A.133

However, malfunction provisions do not apply to NSR/PSD determinations.